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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0042; Project Identifier MCAI–2023–00659–R; Amendment 39–22759; AD 2024–10–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters. This AD was prompted by a report of cracks on the fuel filter bowl (bowl) due to over-torquing. This AD requires visually inspecting the bowls of the right hand (RH) and left hand (LH) fuel filters for any cracks and seepage. Depending on the inspection results, this AD requires removing an affected fuel filter from service and replacing that part. This AD also allows a certain fuel filter to be installed on a helicopter if certain actions are accomplished. These requirements are specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 13, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 13, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–0042; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet easa.europa.eu. You may find the EASA material on the EASA website at ad.easa.europa.eu.

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–0042.

Other Related Service Information:

For Airbus Helicopters service information, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; phone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at airbus.com/en/products-services/helicopters/hcare-services/airbusworld.

FOR FURTHER INFORMATION CONTACT: Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7244; email: william.mccully@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0095, dated May 8, 2023 (EASA AD 2023–0095), to correct an unsafe condition on Airbus Helicopters AS 332 C, AS 332 C1, AS 332 L, AS 332 L1, AS 332 L2, and EC 225 LP helicopters, all serial numbers.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters. The NPRM published in the **Federal Register** on February 2, 2024 (89 FR 7302). The NPRM was prompted by a report of a report of cracks on the bowl due to over-torquing.

The NPRM proposed to require accomplishing the actions specified in EASA AD 2023–0095, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under “Differences Between this AD and the EASA AD.” The FAA is issuing this AD to address the unsafe condition on these products.

You may examine EASA AD 2023–0095 in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–0042.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters.

Related Material Under 14 CFR Part 51

EASA AD 2023–0095 requires a one-time inspection of the bowls of the LH and RH fuel filters for cracks and seepage. Depending on the inspection results, EASA AD 2023–0095 requires replacement of an affected part with a serviceable part, as defined in EASA AD 2023–0095. EASA AD 2023–0095 also allows certain fuel filters to be installed on a helicopter if certain actions are accomplished.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Material

The FAA also reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. AS332–28.00.88, and Airbus Helicopters ASB No. EC225–28A030, both Revision 0, and both dated April 25, 2023. This service information specifies procedures for a visual inspection the bowls on the RH and LH

fuel filters for any cracks and seepage. Depending on the inspection results, this service information specifies procedures to remove and replace an affected fuel filter. This service information also specifies sending an affected fuel filter along with certain information to Airbus Helicopters, and performing an aspect check after replacement of the affected parts.

Differences Between This AD and the EASA AD

EASA AD 2023–0095 requires replacing each affected fuel filter with a serviceable fuel filter if any discrepancy is detected, whereas this AD requires removing each affected fuel filter from service and replacing it with a serviceable fuel filter, as described in EASA AD 2023–0095, if any crack or seepage is detected.

Service information referenced in EASA AD 2023–0095 specifies reporting certain information and sending affected parts to Airbus Helicopters, whereas this AD does not require sending information or parts to Airbus Helicopters.

Costs of Compliance

The FAA estimates that this AD affects 40 helicopters of U.S. registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting each bowl for cracks (with 2 bowls per helicopter) and seepage will take approximately 1 work-hour for an estimated cost of \$170 per helicopter and \$6,800 for the U.S. fleet.

Replacing an affected fuel filter with a serviceable fuel filter will take approximately 1 work-hour and parts will cost approximately \$6,290 for an estimated cost of \$6,375 per fuel filter replacement.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of

that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2024–10–13 Airbus Helicopters:

Amendment 39–22759; Docket No. FAA–2024–0042; Project Identifier MCAI–2023–00659–R.

(a) Effective Date

This airworthiness directive (AD) is effective August 13, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2821, Aircraft fuel filter/strainer.

(e) Unsafe Condition

This AD was prompted by a report of cracks on the fuel filter bowl (bowl) due to over-torquing. The FAA is proposing this AD to inspect for cracks and seepage on the bowl of the left-hand (LH) and right-hand (RH) fuel filter. The unsafe condition, if not addressed, could result in failure of the bowl, in-flight shutdown, and subsequent reduced control of the helicopter.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0095, dated May 8, 2023 (EASA AD 2023–0095).

(h) Exceptions to EASA AD 2023–0095

(1) Where EASA AD 2023–0095 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2023–0095 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph (1) of EASA AD 2023–0095 requires an inspection “in accordance with the instructions of the applicable ASB,” for this AD, replace that text with, “in accordance with paragraph 3.B.2.a. of the applicable ASB, except you are not required to comply with paragraph 3.B.2.b or 3.B.3.”

(4) Where paragraph (2) of EASA AD 2023–0095 states “replace the affected part with a serviceable part in accordance with the instructions of the applicable ASB,” this AD requires replacing those words with “remove the affected part from service and replace it with a serviceable part.”

(5) Where the service information referenced in EASA AD 2023–0095 specifies to “make sure that there is no crack and no seepage on the bowls (a) of the RH and LH fuel filters (b),” this AD requires replacing those words with “Inspect for any crack and seepage on the bowls (a) of the RH and LH fuel filters (b).”

(6) Where the service information referenced in EASA AD 2023–0095 specifies “If there is a crack and/or a seepage on the bowls (a) of the RH and LH fuel filters (b), comply with paragraph 3.B.2.b.,” this AD requires replacing that text with “If there is a crack or seepage on the bowls (a) of the RH or LH fuel filter (b), before further flight, remove the affected part from service and replace with a serviceable part, as defined in EASA AD 2023–0095.”

(7) This AD does not adopt the “Remarks” section of EASA AD 2023–0095.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0095 specifies to submit certain information and return parts to the manufacturer, this AD does not include those requirements.

(j) Special Flight Permit

Special flight permits are prohibited.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Related Information

For more information about this AD, contact Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone (781) 238-7244; email william.mccully@faa.gov.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2023-0095, dated May 8, 2023.

(ii) [Reserved]

(3) For EASA AD 2023-0095, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet easa.europa.eu. You may find the EASA material on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222 5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on May 17, 2024.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024-14880 Filed 7-8-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2024-0236; Project Identifier MCAI-2022-00066-R; Amendment 39-22754; AD 2024-10-08]

RIN 2120-AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Leonardo S.p.a. Model AW189 helicopters. This AD was prompted by a report of abnormal oscillatory behavior during automated glide slope approaches, due to sealant on the glide slope (G/S) antenna coaxial connectors. This AD requires visually inspecting certain G/S antennas and G/S antenna coaxial connectors for the presence of any sealant; cleaning parts and removing any sealant; performing an external G/S acceptance test procedure (ATP); and taking corrective actions if necessary. This AD would also prohibit installing certain G/S antennas and G/S antenna coaxial connectors. These requirements are specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 13, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 13, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2024-0236; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet easa.europa.eu. You may find

the EASA material on the EASA website at ad.easa.europa.eu.

- You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at regulations.gov under Docket No. FAA-2024-0236.

Other Related Service Information: For Leonardo Helicopters service information identified in this final rule, contact Leonardo S.p.A Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; phone (+39) 0331-225074; fax (+39) 0331-229046; or at customerportal.leonardocompany.com/en-US/.

FOR FURTHER INFORMATION CONTACT:

Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238-7241; email: Sungmo.D.Cho@faa.gov.

SUPPLEMENTARY INFORMATION:**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Leonardo S.p.a. Model AW189 helicopters. The NPRM published in the **Federal Register** on February 27, 2024 (89 FR 14417). The NPRM was prompted by EASA AD 2022-0010, dated January 20, 2022 (EASA AD 2022-0010), issued by EASA, which is the Technical Agent for the Member States of the European Union. EASA AD 2022-0010 states an in-flight abnormal oscillatory action of an Model AW189 helicopter was reported during automated G/S approaches. EASA AD 2022-0010 states subsequent investigation identified sealant on the G/S antenna coaxial connectors.

In the NPRM, the FAA proposed to require a one-time inspection of certain G/S antennas and G/S antenna coaxial connectors for the presence of any sealant; cleaning parts and removing any sealant; performing an external G/S ATP; and taking corrective actions if necessary. The FAA is issuing this AD to detect and address sealant on or around the G/S antenna. The unsafe condition, if not addressed, could lead to erratic signals from the G/S antenna, which could result in reduced capability of the helicopter to perform safe automated approaches. See EASA AD 2022-0010 for additional background information.

You may examine EASA AD 2022–0010 in the AD docket at *regulations.gov* under Docket No. FAA–2024–0236.

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters.

Related Service Information Under 14 CFR Part 51

EASA AD 2022–0010 requires visually inspecting G/S antenna part number (P/N) 6208–88–62 and G/S antenna coaxial connectors P/N PE4958, which are both parts of G/S antenna kit P/N 8G3430F00111, for any sealant. If any sealant is found, EASA AD 2022–0010 requires removing any sealant, and performing further inspections and corrective actions.

EASA AD 2022–0010 also requires performing an ATP and depending on the results, replacing, and removing certain parts, and additional tests. EASA AD 2022–0010 allows the affected G/S antenna and G/S antenna coaxial connectors to be installed on a helicopter if certain requirements are met.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA also reviewed Leonardo Helicopters Alert Service Bulletin No. 189–295, dated November 29, 2021. This service information specifies procedures for visually inspecting the G/S antenna for the presence of sealant; removing any sealant that is detected; removing and replacing any affected parts; performing any corrective actions if necessary, performing an ATP, which includes verifying flight display, decibel milliwatts, and pass/fail information; and reporting certain information to the manufacturer.

Differences Between This AD and the EASA AD

If any discrepancy is found during the ATP, EASA AD 2022–0010 requires replacing each affected part with a serviceable part, whereas this AD requires removing each affected part from service and replacing it with a serviceable part.

Service information referenced in EASA AD 2022–0010 contains an inspection report (ANNEX B), whereas this AD does not require completing that information.

Costs of Compliance

The FAA estimates that this AD affects 4 helicopters of U.S. registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Visually inspecting for sealant around the G/S antenna will take approximately 5 work-hours for an estimated cost of \$425 per helicopter and up to \$1,700 for the U.S. fleet.

If required, removing any sealant and cleaning any part will take approximately 0.5 work-hour for an estimated cost of \$43 per helicopter.

Performing an ATP will take approximately 1 work-hour for an estimated cost of \$85 per helicopter and up to \$340 for the U.S. fleet.

If required, removing and replacing a G/S antenna, to include removing and replacing the connectors will take approximately 3 work-hours and parts will cost \$100,100 for an estimated cost of \$100,355 per helicopter.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a “significant regulatory action” under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2024–10–08 Leonardo S.p.a.: Amendment 39–22754; Docket No. FAA–2024–0236; Project Identifier MCAI–2022–00066–R.

(a) Effective Date

This airworthiness directive (AD) is effective August 13, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Leonardo S.p.a. Model AW189 helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code: 3432, Glide slope system.

(e) Unsafe Condition

This AD was prompted by a report of abnormal oscillatory behavior during automated glide slope approaches, due to sealant on the glide slope (G/S) antenna coaxial connectors. The FAA is issuing this AD to detect and address sealant on or

around the G/S antenna. The unsafe condition, if not addressed, could lead to erratic signals from the G/S antenna, which could result in reduced capability of the helicopter to perform safe automated approaches.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0010, dated January 20, 2022 (EASA AD 2022–0010).

(h) Exceptions to EASA AD 2022–0010

(1) Where EASA AD 2022–0010 states “flight hours;” for this AD, replace that text with “hours time-in-service.”

(2) Where EASA AD 2022–0010 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph (1) of EASA AD 2022–0010 states “in accordance with the instructions of Part I of the ASB;” for this AD, replace that text with “in accordance with the Accomplishment Instructions, Part I, paragraphs 4 and 5 of the ASB.”

(4) Where paragraph (2) of EASA AD 2022–0010 states “in accordance with the instructions of Part I of the ASB;” for this AD, replace that text with “in accordance with the Accomplishment Instructions, Part I, paragraphs 6.3 (including the two cautions above paragraph 6.3) through 6.5 (but not paragraphs 6.5.1 and 6.5.2) of the ASB.”

(5) Where paragraphs (4) and (5) of EASA AD 2022–0010 state “discrepancy;” for this AD, replace that text with “discrepancy, which is one or more “fail” results in the acceptance test procedure.”

(6) Where paragraphs (4) and (5) of EASA AD 2022–0010 state to “replace the/those affected parts with serviceable parts;” for this AD, replace that text with “remove the affected part, as defined in EASA AD 2022–0010, from service and replace it with a serviceable part, as defined in EASA AD 2022–0010. Thereafter, after installing a serviceable part, as defined in EASA AD 2022–0010, before further flight, accomplish an acceptance test procedure (ATP) in accordance with the instructions of Annex A of the ASB.”

(7) Where the service information referenced in EASA AD 2022–0010 specifies discarding existing hardware, this AD requires removing the existing hardware from service.

(8) Where paragraph (4) of EASA AD 2022–0010 states “in accordance with the instructions of Part I of the ASB;” for this AD, replace that text with “in accordance with the Accomplishment Instructions, Part I, paragraphs 9 through 11 of the ASB.”

(9) Where paragraph (5) of EASA AD 2022–0010 states “in accordance with the instructions of Part II of the ASB;” for this AD, replace that text with “in accordance with the Accomplishment Instructions, Part II, paragraphs 2 through 4 of the ASB.”

(10) This AD does not adopt the “Remarks” section of EASA AD 2022–0010.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0010 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permits

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199, provided there are no passengers, and no flights are performed under instrument flight rules (IFR).

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Related Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7241; email: Sungmo.D.Cho@faa.gov.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0010, dated January 20, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0010, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet easa.europa.eu. You may find the EASA material on the EASA website at ad.easa.europa.eu.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222 5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on May 14, 2024.

James D. Foltz,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024–14890 Filed 7–8–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0461; Project Identifier AD–2023–00994–E; Amendment 39–22767; AD 2024–12–03]

RIN 2120–AA64

Airworthiness Directives; CFE Company Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain CFE Company (CFE) Model CFE738–1–1B engines. This AD was prompted by a manufacturer investigation that revealed certain high-pressure turbine (HPT) stage 1 and stage 2 disks were manufactured from powder metal material suspected to contain iron inclusion. This AD requires replacement of affected HPT stage 1 and stage 2 disks with parts eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 13, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 13, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2024–0461; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For CFE material, contact CFE Company, 111 S 34th Street, Phoenix, AZ 85034; phone: (800) 601–3099; email: CFE738DataCenter@honeywell.com; website: aerospace.honeywell.com.

- You may view this material at the FAA, Airworthiness Products Section,

Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2024–0461.

FOR FURTHER INFORMATION CONTACT:
Alexei Marqueen, Aviation Safety Engineer, FAA, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7178; email: *alexei.t.marqueen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would that apply to certain CFE Model CFE738–1–1B engines with HPT stage 1 and HPT stage 2 disks installed. The NPRM published in the **Federal Register** on March 8, 2024 (89 FR 16710). The NPRM was prompted by a manufacturer investigation that revealed certain HPT stage 1 and HPT stage 2 disks, installed on certain CFE738–1–1B model engines, were manufactured from powder metal

material suspected to contain iron inclusion. Further investigation by the manufacturer determined that the iron inclusion is attributed to deficiencies in the manufacturing process and may cause reduced material properties and a lower fatigue life capability, which may result in structural failure. The manufacturer also informed the FAA that additional risk assessments determined that there were no failed events associated with the discovery of this iron inclusion material, however concluded that replacement of the affected HPT stage 1 and HPT stage 2 disks is necessary. In the NPRM, the FAA proposed to require replacement of affected HPT stage 1 and HPT stage 2 disks with parts eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Material Under 1 CFR Part 51

The FAA reviewed CFE Service Bulletin CFE738–72–A8082, dated July 4, 2023, which specifies the affected part and serial numbers of the HPT stage 1 and stage 2 disks and specifies replacement instructions for the affected parts. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 29 engines installed on airplanes of U.S. registry.
The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S operators
Replace HPT stage 1 disk (25 engines)	8 work-hours × \$85 per hour = \$680	\$78,797	\$79,477	\$1,986,925
Replace HPT stage 2 disk (4 engines)	8 work-hours × \$85 per hour = \$680	56,268	56,948	227,792

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a

substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2024–12–03 CFE Company: Amendment 39–22767; Docket No. FAA–2024–0461; Project Identifier AD–2023–00994–E.

(a) Effective Date

This airworthiness directive (AD) is effective August 13, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFE Company (CFE) Model CFE738–1–1B engines with an installed high-pressure turbine (HPT) stage 1 disk or HPT stage 2 disk with a part number (P/N) and serial number (S/N) identified in Section 1. Planning Information, paragraph E. Compliance, Tables 2 and 3 of CFE Service

Bulletin (SB) CFE738–72–A8082, dated July 4, 2023 (CFE738–72–A8082).

(d) Subject

Joint Aircraft System Component (JASC)
Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a manufacturer investigation that revealed certain HPT stage 1 disks and HPT stage 2 disks were manufactured from powder metal material suspected to contain iron inclusion. The FAA is issuing this AD to prevent premature fracture and consequent uncontained failure. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

At the applicable times specified in paragraphs (g)(1) and (2) of this AD, remove each affected HPT stage 1 disk and HPT stage 2 disk from service and replace with a part eligible for installation, in accordance with steps (1) through (9) in paragraph B. of the Accomplishment Instructions of CFE738–72–A8082.

(1) For affected HPT stage 1 disks, at the next piece-part exposure or before exceeding 2,450 cycles since new (CSN), whichever occurs first.

(2) For affected HPT stage 2 disks, at the next piece-part exposure or before exceeding 2,930 CSN, whichever occurs first.

(h) Definition

For the purpose of this AD:

(1) A “part eligible for installation” is any HPT stage 1 disk or HPT stage 2 disk with a P/N and S/N that is not identified in Section 1. Planning Information, paragraph E. Compliance, Tables 2 and 3 of CFE738–72–A8082.

(2) “Piece-part exposure” is when the affected part is removed from the engine.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the AIR–520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (j) of this AD and email to: ANE-AD-AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

For more information about this AD, contact Alexei Marqueen, Aviation Safety Engineer, FAA, 2200 South 216th Steet, Des

Moines, WA 98198; phone: (781) 238–7178; email: alexei.t.marqueen@faa.gov.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) CFE Service Bulletin CFE738–72–A8082, dated July 4, 2023.

(ii) [Reserved]

(3) For CFE material, contact CFE Company, 111 S 34th Street, Phoenix, AZ 85034; phone: (800) 601–3099; email: CFE738DataCenter@honeywell.com; website: aerospace.honeywell.com.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on June 11, 2024.

Suzanne Masterson,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–14939 Filed 7–8–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0757; Project Identifier MCAI–2023–01205–T; Amendment 39–22765; AD 2024–12–01]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–14–10, which applied to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2022–14–10 required repetitive inspections for cracking of the radius of the front spar vertical stringers and the horizontal floor beam on a certain frame

(FR), repetitive inspections for cracking of the fastener holes of the front spar vertical stringers on that frame, and repair if necessary. AD 2022–14–10 also provided, for certain airplanes, a modification of the center wing box area that terminates the repetitive inspections under certain conditions. Since the FAA issued AD 2022–14–10, an additional airplane model has been identified that is also subject to the unsafe condition. This AD continues to require the actions in AD 2022–14–10 and adds Model A321–271N airplanes to the applicability, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference (IBR). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 13, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 13, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2024–0757; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

• For EASA material, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

• You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at regulations.gov under Docket No. FAA–2024–0757.

FOR FURTHER INFORMATION CONTACT:

Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email timothy.p.dowling@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2022–14–10, Amendment 39–22115 (87 FR 42315, July 15, 2022), (AD 2022–14–10). AD 2022–14–10 applied to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2022–14–10 required repetitive inspections for cracking of the radius of the front spar vertical stringers and the horizontal floor beam on FR 36, repetitive inspections for cracking of the fastener holes of the front spar vertical stringers on FR 36, and repair if necessary, and, for certain airplanes, a potential terminating action modification of the center wing box area. The FAA issued AD 2022–14–10 to address fatigue cracking of the front spar vertical stringers on the wings, which, if not corrected, could result in reduced structural integrity of the airplane.

The NPRM published in the **Federal Register** on March 22, 2024 (89 FR 20364). The NPRM was prompted by AD 2023–0205, dated November 21, 2023 (EASA AD 2023–0205) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states that analysis of the full-scale certification fatigue testing findings indicated that Model A321–271N airplanes are also subject to the unsafe condition. Fatigue cracking of the front spar vertical stringers on the wings, if not detected and corrected, could lead to crack propagation, possibly resulting in reduced structural integrity of the airplane.

In the NPRM, the FAA proposed to continue to require the actions in AD

2022–14–10 and add Model A321–271N airplanes to the applicability, as specified in EASA AD 2023–0205. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2024–0757.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from United Airlines who supported the NPRM without change.

Additional Changes Made to This AD

The FAA added paragraphs (h)(5) and (6) of this AD to clarify who can provide approval instructions for certain actions. These paragraphs correspond to actions retained from AD 2022–14–10 and were inadvertently omitted from the proposed AD.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0205 specifies procedures for repetitive special

detailed inspections for cracking of the radius of the front spar vertical stringers, horizontal floor beam radius and fastener holes of the front spar vertical stringers on FR 36, and for installing new fasteners. EASA AD 2023–0205 further describes procedures for repetitive high frequency eddy current (HFEC) inspections for cracking of the horizontal floor beam, repetitive HFEC inspections for cracking of the fastener holes of the front spar vertical stringers on FR 36, repetitive rototest inspections of the fastener holes of the spar vertical stringers, and repair. EASA AD 2023–0205 also describes procedures for the modification of the center wing box area. The modification is required for airplanes in configuration 1, 2 or 3; and for airplanes in configuration 5, 6, or 7, the modification is optional and is a terminating action for the repetitive inspections when done within a specified time frame. The modification includes related investigative and corrective actions. Related investigative actions include an HFEC inspection on the radius of the rib flanges, a rototest inspection of the fastener holes, detailed and HFEC inspections for cracking on the cut edges, detailed and rototest inspections on all open fastener holes, and an inspection to determine if secondary structure brackets are installed. Corrective actions include rework of the secondary structure bracket and repair.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 1,755 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection, per inspection cycle.	25 work-hours × \$85 per hour = \$2,125.	Up to \$100	Up to \$2,225	Up to \$3,904,875.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
Up to 409 work-hours × \$85 per hour = Up to \$34,765	Up to \$66,050	Up to \$100,815.

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more

detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
- a. Removing Airworthiness Directive (AD) 2022–14–10, Amendment 39–22115 (87 FR 42315, July 15, 2022); and
 - b. Adding the following new AD:

2024–12–01 Airbus SAS: Amendment 39–22765; Docket No. FAA–2024–0757; Project Identifier MCAI–2023–01205–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 13, 2024.

(b) Affected ADs

This AD replaces AD 2022–14–10, Amendment 39–22115 (87 FR 42315, July 15, 2022) (AD 2022–14–10).

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0205, dated November 21, 2023 (EASA AD 2023–0205).

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, and –271N airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report that, during a center fuselage certification full-scale fatigue test, cracks were found on the front spar vertical stringer at a certain frame. This AD was also prompted by a determination that Model A321 airplanes that have incorporated modification 160021 are also subject to the unsafe condition. The FAA is issuing this AD to address fatigue cracking of the front spar vertical stringers on the wings. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0205.

(h) Exceptions to EASA AD 2023–0205

(1) Where EASA AD 2023–0205 refers to "22 November 2021 [the effective date of EASA AD 2021–0241]," this AD requires using August 19, 2022 (the effective date of AD 2022–14–10).

(2) Where EASA AD 2023–0205 refers to its effective date, this AD requires using the effective date of this AD.

(3) This AD does not adopt the "Remarks" section of EASA AD 2023–0205.

(4) Where paragraph (5) of EASA AD 2023–0205 specifies "if any crack is found, before next flight, contact Airbus for approved corrective action instructions and accomplish those instructions accordingly," this AD requires replacing that text with "if any crack is found, the crack must be repaired before further flight using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA

Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature."

(5) Where paragraph (4) of EASA AD 2023–0205 specifies actions for airplanes repaired "in accordance with instructions approved by EASA or approved under the authority of Airbus Design Organization Approval (DOA) privileges," this AD requires replacing that text with "using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature."

(6) Where paragraph (9) of EASA AD 2023–0205 specifies approval "by Airbus DOA," this AD requires replacing that text with "by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature."

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0205 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (k) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email timothy.p.dowling@faa.gov.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0205, dated November 21, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0205, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations, or email fr.inspection@nara.gov.

Issued on June 5, 2024.

Suzanne Masterson,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–14868 Filed 7–8–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2023–1640; Project Identifier AD–2022–00283–E; Amendment 39–22768; AD 2024–12–04]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Pratt & Whitney (PW) Model PW2037, PW2037M, and PW2040 engines with a certain high-pressure turbine (HPT) 2nd stage blade assembly installed. This AD was prompted by an in-flight shutdown

(IFSD) caused by the fracture of HPT 2nd stage turbine hub assembly lugs, which resulted in blade liberation and a titanium fire in the high-pressure compressor (HPC). This AD requires a visual inspection of the HPT 2nd stage blade assemblies for missing contact marks, a dimensional shadowgraph inspection of the HPT 2nd stage blade assemblies for blade root profile dimensional deviations, and an eddy current inspection (ECI) of the HPT 2nd stage turbine hub assembly for conforming slot flatness. This AD also requires removal from service and replacement of any HPT 2nd stage turbine hub assembly or HPT 2nd stage blade assembly that does not pass any inspection. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 13, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 13, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2023–1640; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information, contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06118; phone: (860) 565–0140; email: help24@pw.utc.com; website: connect.prattwhitney.com.
- You may view this service information at the FAA, Airworthiness Products Section, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at regulations.gov under Docket No. FAA–2023–1640.

FOR FURTHER INFORMATION CONTACT:

Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7655; email: carol.nguyen@faa.gov.

SUPPLEMENTARY INFORMATION:**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all PW Model PW2037,

PW2037M, and PW2040 engines with a certain HPT 2nd stage blade assembly installed. The NPRM published in the **Federal Register** on August 25, 2023 (88 FR 58114). The NPRM was prompted by an IFSD caused by the fracture of HPT 2nd stage turbine hub assembly lugs, which resulted in blade liberation and a titanium fire in the HPC.

In the NPRM, the FAA proposed to require a visual inspection of the HPT 2nd stage blade assemblies for missing contact marks, a dimensional shadowgraph inspection of the HPT 2nd stage blade assemblies for blade root profile dimensional deviations, and an ECI of the HPT 2nd stage turbine hub assembly for conforming slot flatness. The NPRM also proposed to require removal from service and replacement of any HPT 2nd stage turbine hub assembly or HPT 2nd stage blade assembly that does not pass any inspection. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive**Comments**

The FAA received comments from six commenters. The commenters were The Boeing Company (Boeing), Delta Air Lines (Delta), European Air Transport (EAT), FedEx Express (FedEx), MTU Maintenance Hannover GmbH (MTU), and United Parcel Service (UPS). Boeing supported the NPRM without change. The following presents the comments received from Delta, EAT, FedEx, MTU, and UPS on the NPRM and the FAA's response to each comment.

Request To Exempt Certain Hubs From NPRM Cycle Limit

Delta requested that the FAA allow hubs with an ECI performed on 25% of the blade slots to be inspected in accordance with the updated dimensional ECI procedure at the next piece part exposure of the HPT 2nd stage turbine hub assembly, rather than being inspected within the cycle limit of the NPRM. Delta noted that Method 2, Step 4 in PW Alert Service Bulletin PW2000 A72–777, Initial Issue, dated September 29, 2021 (PW2000 A72–777, Initial Issue) requires that HPT 2nd stage turbine hub assemblies be installed that have passed the HPT 2nd stage turbine hub assembly ECI inspection specified in PW2000 Engine Manual, Task 72–52–16–200–006, but does not provide guidance on the required amount of slots to be inspected. Delta also noted that in the beginning of the HPT Field Management Program for this unsafe condition and

prior to the updated ECI procedure being released for the HPT 2nd stage turbine hub assembly, T2 blades were inspected for conformance and installed into HPT 2nd stage turbine hub assemblies that were made serviceable with previous ECI instructions specified in the PW2000 Engine Manual, where only 16 out of 64 (25%) slots were required to be eddy current inspected.

The FAA disagrees with the request because there is a higher probability of identifying damage to the hub when 100% of the slots are inspected. Additionally, allowing hubs that have had an ECI performed on 25% of blade slots to wait until the next piece-part exposure for the updated ECI would increase the risk of failure. The FAA removed previous credit for PW2000 A72-777, Initial Issue, to ensure only HPT 2nd stage turbine hub assemblies with ECI performed on 100% of the blade slots comply with this AD. However, once this AD is published, any person may request approval of an alternative method of compliance (AMOC) under the provisions of paragraph (i) of this AD. The FAA did not change this AD as a result of this comment.

Request To Clarify Applicability for Hubs Divorced From Mating Blades

Delta requested that the FAA provide guidance on whether hubs that were divorced from their mating blades and do not have the required inspection results are exempt from the requirements of the NPRM, provided that the replacement set of blades to be installed are conforming to the visual and shadowgraph inspection requirements of PW Alert Service Bulletin PW2000 A72-777, Revision 2, dated April 11, 2023 (PW2000 A72-777, Rev. 2). Delta stated that there is no way to perform the actions required in the NPRM and PW2000 A72-777, Rev. 2 to determine serviceability related to this unsafe condition for piece part hubs that were already divorced from their mating blades because previously installed blades were not traced and may have already gone through overhaul process or were scrapped. Delta noted that after overhaul or scrapping of blades, visual contact patterns and blade profile are no longer available for inspection.

The FAA agrees that clarification is necessary. Hubs that are divorced from their mating blades are not exempt from the requirements of this final rule and are considered unserviceable, and therefore no exemption is necessary. The FAA did not change this AD as a result of this comment.

Request To Define Methodology for Returning Hub to Service

Delta requested that the FAA define the methodology for returning a hub to service using Section 1, Step 1.E. of PW2000 A72-777, Rev. 2, and as it relates to previous methods of compliance in previous revisions and previous PW Special Instructions (SIs). Delta noted that Section 1, Step 1.E. of PW2000 A72-777, Rev. 2 states that if an HPT 2nd stage blade assembly fails the visual inspection as specified in Step 1.B., all related HPT 2nd stage blade assemblies pass the shadowgraph inspection as specified in Step 1.C., and the related HPT 2nd stage hub assembly passes the ECI as specified in Step 1.D, the HPT 2nd Stage Blade Assemblies could be returned to P&W Customer Technical Service for additional inspection to identify the hub serviceability. Delta also noted that PW provided Pratt and Whitney Cover E.A. No. 22FA014, dated 26 October 2022, to accept these hubs into service.

The FAA disagrees with the request. The FAA notes that while Section 1, Step 1.E. of PW2000 A72-777, Rev. 2 is an optional method to return the hubs to service, it is not an action required by this AD and, therefore, defining the methodology for returning a hub to service is unnecessary. The FAA did not change this AD as a result of this comment.

Request To Clarify Requirements for Credit for Previous Actions

Delta requested that the FAA clarify if the required for compliance (RC) steps listed in PW2000 A72-777, Rev. 2 carry over to the previous versions of the ASB and previous versions of the PW SIs in order to provide credit for previous actions. Alternatively, Delta requested that the FAA provide the specific steps from each of the previous service information documents that are required in order to receive credit for previous actions. Delta noted that none of the previous revisions of the service information contain RC steps, which could cause confusion to operators regarding whether to request an AMOC for deviations from those instructions.

The FAA agrees to revise paragraph (h) of the final rule by removing PW2000 A72-777, Initial Issue, and instead including PW SI NO. 62F-21, dated June 7, 2021, PW SI NO. 62F-21A, dated October 4, 2021, PW SI NO. 73F-21, Revision A, dated September 29, 2021 (SI NO. 73F-21, Rev. A), and PW SI NO. 73F-21, Initial Issue, dated April 6, 2021 (SI NO. 73F-21, Initial Issue).

Request To Add Service Information for Shadowgraph Inspections

Delta requested that the FAA revise the NPRM to allow the shadowgraph inspections of the hub to be performed in accordance with all previous revisions to PW SI NO. 78F-21, Revision F, dated June 13, 2022 (SI NO. 78F-21, Rev. F). Delta noted that PW Alert Service Bulletin PW2000 A72-777, Revision 1, dated December 21, 2022 (PW2000 A72-777, Rev. 1) and PW2000 A72-777, Rev. 2 refer to "SI 78F-21, Rev F released 6/13/2022 or later revision," and previous revisions of SI NO. 78F-21 are permitted by PW2000 A72-777, Initial Issue. Delta also noted that several of the PW SI revisions were issued prior to PW2000 A72-777, Initial Issue.

The FAA disagrees with the request to allow the shadowgraph inspections of the hub to be performed in accordance with previous revisions of SI NO. 78F-21. SI NO. 78F-21, Rev. F already provides previous credit for previous revisions, which makes it unnecessary to provide credit for actions done using the previous revisions. The FAA did not change this AD as a result of this comment.

Request To Add Service Information for Visual Inspections

Delta requested that the FAA revise the NPRM to allow the visual inspections of the hub for contact marks to be performed in accordance with SI NO. 73F-21, Initial Issue. Delta noted that PW2000 A72-777, Rev. 2 refers to "SI 73F-21, Rev A released 9/29/2021 or later revision," and SI NO. 73F-21, Initial Issue is permitted per PW2000 A72-777. Delta also noted that several of the PW SI revisions were issued prior to PW2000 A72-777.

The FAA agrees with the request and has revised paragraph (h) of this AD to include credit for actions done in accordance with SI NO. 73F-21, Initial Issue.

Request To Clarify Means To Accept New Blades

Delta requested that the FAA revise the NPRM to clarify that communication from PW may be used as a means to accept new blades that meet the intent of SI NO. 78F-21, Initial Issue and later revisions. Delta noted that they have been using EagleNet Cases from PW for new blades where the intent of SI NO. 78F-21, Initial Issue and later revisions was accomplished. Delta also noted that PW does not include SI NO. 78F-21, Initial Issue or later revisions on the form FAA 8130-3 for new blades, and the markings on the blades are not always listed.

The FAA disagrees with the request. The FAA notes that this AD already refers to PW2000 A72-777, Rev. 2, as the appropriate service information, which also references SI NO. 78F-21, Rev. F. Additionally, SI NO. 78F-21, Rev. F allows credit for communications from PW as a means to accept new blades that meet the intent of SI NO. 78F-21, Initial Issue and later revisions. The FAA did not change this AD as a result of this comment.

Request To Clarify Typographical Error in Service Information

Delta requested that the FAA comment or provide guidance related to on a typographical error contained in the header of pages 3 through 8 of SI NO. 73F-21, Revision B, dated April 10, 2023 (SI NO. 73F-21, Rev. B). The typographical error incorrectly lists the document as Special Instruction No. 73F-21 A.

The FAA acknowledges that there is a typographical error contained in the header of pages 3 through 8 of SI NO. 73F-21, Rev. B which incorrectly lists the document as Special Instruction No. 73F-21 A. However, the typographical error does not change the content of the document, which is only allowed as credit for actions accomplished prior to the effective date of this AD. Additionally, after the effective date of this AD, the appropriate service information for the required actions is PW2000 A72-777 R7, Rev. 2. The FAA did not change this AD as a result of this comment.

Request To Add Credit Note to AD

Delta requested that the FAA add the following note from SI NO. 73F-21, Rev. B to the NPRM; "Accomplishment of PW2000 Engine Manual (Revision 131 or later) 72-52-17 Inspection/Check-14 is equivalent to the accomplishment of this Special Instruction 73F-21." Delta noted that since SI NO. 73F-21, Rev. B includes the PW2000 Engine Manual allowance, the same allowance should carry over to previous revisions of SI NO. 73F-21 that define the actions to correct the unsafe condition.

The FAA disagrees with the request. Earlier revisions of SI NO. 73F-21 did not contain this note, and the note specifically applies to SI NO. 73F-21, Rev. B. Additionally, after the effective date of this AD, the appropriate service information for the required actions is PW2000 A72-777 R7, Rev. 2. The FAA did not change this AD as a result of this comment.

Request To Clarify the Required Compliance Times

EAT requested that the FAA update the NPRM to clarify that actions identified as "RC" in, and in accordance with, the Accomplishment Instructions of PW2000 A72-777, Rev. 2, are one-time actions. EAT inferred that without this clarification, engines would need to undergo the required inspections every 1,800 flight cycles, which would limit the on-wing time for all worldwide engines. FedEx requested that the FAA revise the NPRM to include a terminating action paragraph. FedEx pointed out that neither the NPRM nor the required service information explicitly state that the actions are one-time only.

The FAA agrees to clarify. The actions required by this final rule are identified as "RC" in PW2000 A72-777, Rev. 2, which is the required service information. While not explicitly stated in either this final rule or the required service information, those actions are one-time only and have no stated repetitive compliance times. The FAA also notes that terminating action paragraphs are used specifically to terminate repetitive actions. However, the FAA is not mandating repetitive actions in this AD and, therefore, a terminating action paragraph is unnecessary. The FAA did not change this AD as a result of this comment.

Request To Clarify Parts Eligible for Installation

EAT requested that the FAA clarify that parts that were overhauled using the engine manual prior to the availability of PW2000 A72-777 should be eligible for installation. EAT noted that the NPRM and PW2000 A72-777, Rev. 2 do not mention HPT 2nd stage turbine hub assemblies which were repaired/overhauled before the initial issue of PW2000 A72-777 in September 2021. EAT also noted that the parts were overhauled in accordance with the valid engine manual at that time and therefore serviceable and eligible for installation.

The FAA agrees to clarify. Parts that were overhauled using the engine manual prior to the availability of PW2000 A72-777 are not eligible for installation. The FAA is publishing this AD to address a quality escape on the HPT 2nd stage blade assemblies. Removing the non-conforming blades and the corresponding HPT 2nd stage turbine hub from service is necessary to correct the unsafe condition. If the actions performed prior to the effective date of this AD do not meet the definition of a part eligible for installation, the part cannot be installed

on an engine. Additionally, the FAA has included credit for previous actions, using certain service information, in paragraph (h) of this AD, provided that those actions were done before the effective date of this AD. The FAA did not change this AD as a result of this comment.

Request To Reduce Inspection Requirements for Certain Hub Assemblies

EAT requested that the FAA revise the NPRM to allow HPT 2nd stage turbine hub assemblies removed prior to the initial issue of PW2000 A72-777 to pass only the 100% lug ECI inspection, instead of requiring all blades previously installed on the hub to pass the visual and shadowgraph inspection. EAT pointed out that the requirement for all blades to pass the visual and shadowgraph inspections was not a mandatory action at that time.

The FAA disagrees with the request. In order to correct the unsafe condition, the HPT 2nd stage blade assemblies with part number (P/N) 1B7522 must pass the visual and shadowgraph inspections in order to be considered a part eligible for installation. Additionally, the serviceability of the HPT 2nd stage turbine hub assembly is dependent on the blade assemblies passing the visual and shadowgraph inspections. If the blade assemblies do not pass those inspections, then the HPT 2nd stage turbine hub assembly also does not pass and becomes unserviceable. The FAA did not change this AD as a result of this comment.

Request To Clarify Guidance on Early Inspections Using Engine Manual

FedEx requested that the FAA revise paragraph (g) of the proposed AD and PW2000 A72-777, Rev. 2, Section 2, Paragraph 1.B. to provide guidance for operators that began conducting inspections early in collaboration with the engine manufacturer. FedEx noted that the general visual inspection requirement for blades installed on engines with serial numbers listed in Table 1 on page 9 of PW2000 A72-777, Rev. 2 is waived by a Note in Section 2, Paragraph 1.B. of PW2000 A72-777, Rev. 2. FedEx also noted that some engines were inspected before the initial release of PW2000 A72-777, before the release of earlier revisions of the SI, or per existing instructions for continued airworthiness that were published at the time which makes it impossible to directly claim compliance with the actions identified as "RC" within the Accomplishment Instructions of PW2000 A72-777, Rev. 2. FedEx also provided the following example: some

engines were inspected per PW2000 Engine Manual 72–52–15, Insp/Chk –06 (Firtree ECI) and 72–52–17, Insp/Chk –14 (blade shadowgraph) in the period between February, 2021 and September, 2021 (prior to their October 1, 2021 revision date).

The FAA agrees to provide guidance for operators that performed early inspections in collaboration with the engine manufacturer. Credit for compliance with the Firtree ECI can only be claimed if 100% of the slots were inspected. Credit may not be claimed for the previous ECI of the HPT T2 hub slots for the period between February 2021 and September 2021 because those instructions only required 25% of the slots to be inspected, which does not fully mitigate the unsafe condition. The FAA notes that the final field management plan to address this unsafe condition is described in this AD. The FAA did not change this AD as a result of this comment.

Request To Clarify Inspections for Mixed Blade Engines

MTU requested that the FAA clarify how to address inspections for engines that have a mix of affected and unaffected HPT 2nd stage blade assemblies installed. MTU notes that PW2000 SB 72–775 allows interchangeability of old and new blade assemblies (differentiated by P/N). MTU also inferred that the NPRM is not applicable to an engine which has installed all 64 HPT 2nd stage blade assemblies having P/N 1B8722 in post PW2000 SB 72–775 configuration.

Engines with a mix of affected and unaffected HPT 2nd stage blade assemblies installed must perform the required inspections on the affected blades having P/N 1B7522 only, and 100% of the HPT T2 hub slots. HPT T2 hubs that fail the ECI on any slot must be removed from service. P/N 1B8722 blade assemblies are not required to perform the inspections required by this

AD. If an engine has 64 HPT 2nd stage blade assemblies having P/N 1B8722 installed, then this AD is not applicable to that engine. The FAA did not change this AD as a result of this comment.

Request To Clarify Credit for Inspections Using Initial Release of SI NO. 73F–21

MTU requested that the FAA provide credit for previous actions done in accordance with SI NO. 73F–21, Initial Issue, dated April 6, 2021, or earlier.

The FAA agrees with the request and has updated paragraph (h) of this AD to provide credit for the required actions done before the effective date of this AD using SI NO. 78F–21, dated April 12, 2021. However, operators that prefer to address the unsafe condition by means other than those specified in the referenced service information may request an AMOC in accordance with paragraph (i) of this AD.

Request To Change Compliance Time

UPS requested that the FAA revise the NPRM to allow a longer compliance time. UPS noted that PW part shortages and supply chain constraints have resulted in long lead times. UPS also stated that the required compliance times are not adequate to maintain PW2000 engine spare levels, which would negatively impact UPS operations.

The FAA disagrees with the request to allow a longer compliance time in this AD. In developing an appropriate compliance time, the FAA considered the urgency associated with the subject unsafe condition, the availability of required parts, and the practical aspect of accomplishing the required modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. The FAA has determined that the compliance time provides an acceptable level of safety. However, under the provisions of

paragraph (i) of this AD, the FAA will consider requests for an extension of the compliance time if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. The FAA did not change this AD as a result of this comment.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed PW2000 A72–777, Rev. 2, which specifies procedures for performing a visual inspection of the HPT 2nd stage blade assemblies for missing contact marks, dimensional shadowgraph inspection of the HPT 2nd stage blade assemblies for dimensional deviations, and an ECI of the HPT 2nd stage turbine hub assembly for conforming slot flatness. This service information also specifies removal from service of any HPT 2nd stage turbine hub assembly or HPT 2nd stage blade assembly that does not pass any inspection. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in

ADDRESSES.

Costs of Compliance

The FAA estimates that this AD affects 425 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
ECI of the HPT 2nd stage turbine hub assembly	8 work-hours × \$85 per hour = \$680 ...	\$0	\$680	\$289,000
Visual inspection of the HPT 2nd stage blade assembly.	8 work-hours × \$85 per hour = \$680 ...	0	680	289,000
Dimensional shadowgraph inspection of HPT 2nd stage blade assemblies.	8 work-hours × \$85 per hour = \$680 ...	0	680	289,000

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the inspections. The agency has no way of determining the number

of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace HPT 2nd stage turbine hub assembly	0 work-hours × \$85 per hour = \$0	\$456,000	\$456,000
Replace HPT 2nd stage blade assembly	0 work-hours × \$85 per hour = \$0	17,000	17,000

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2024-12-04 Pratt & Whitney: Amendment 39-22768; Docket No. FAA-2023-1640; Project Identifier AD-2022-00283-E.

(a) Effective Date

This airworthiness directive (AD) is effective August 13, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pratt & Whitney (PW) Model PW2037, PW2037M, and PW2040 engines with a high-pressure turbine (HPT) 2nd stage blade assembly, part number (P/N) 1B7522 installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by an in-flight shutdown caused by the fracture of HPT 2nd stage turbine hub assembly lugs. The FAA is issuing this AD to prevent failure of the HPT 2nd stage turbine hub assembly lug and HPT 2nd stage blade assemblies. The unsafe condition, if not addressed, could result in the uncontained release of the HPT 2nd stage blade assemblies, damage to the engine, and damage to the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

Before exceeding the applicable compliance times specified in Planning Information, Compliance, page 2, of PW Alert Service Bulletin PW2000 A72-777, Revision 2, dated April 11, 2023 (PW2000 A72-777, Rev. 2), or before accumulating 500 cycles after the effective date of this AD, whichever occurs later, perform all applicable actions identified as "RC" (required for compliance) in, and in accordance with, the Accomplishment Instructions of PW2000 A72-777, Rev. 2.

(h) Credit for Previous Actions

You may take credit for the inspections required by paragraph (g) of this AD if you performed those inspections before the effective date of this AD using PW Alert Service Bulletin PW2000 A72-777, Revision 1, dated December 21, 2022, PW Special Instruction (SI) NO. 62F-21, Initial Issue, dated June 7, 2021, or PW SI NO. 62F-21A, dated October 4, 2021.

You may take credit for the inspection specified in Section 1, paragraph 1.B. of the Accomplishment Instructions of PW2000 A72-777, Rev. 2, which is required by paragraph (g) of this AD, if you performed the inspection before the effective date of this AD using PW SI NO. 73F-21, Initial Issue, dated April 6, 2021, or PW SI NO. 73F-21, Revision A, dated September 29, 2021.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR-520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Manager, AIR-520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (j) of this AD and email to: ANE-AD-AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) For service information that contains steps that are labeled as Required for Compliance (RC), the following provisions apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Additional Information

For more information about this AD, contact Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238-7655; email: carol.nguyen@faa.gov.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Pratt & Whitney Alert Service Bulletin PW2000 A72-777, Revision 2, dated April 11, 2023.

(ii) [Reserved]

(3) For Pratt & Whitney service information, contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06118; phone: (800) 565-0140; email: help24@pw.utc.com; website: connect.prattwhitney.com.

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on June 11, 2024.

Suzanne Masterson,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024-14936 Filed 7-8-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2024-0466; Project Identifier MCAI-2023-00862-T; Amendment 39-22766; AD 2024-12-02]

RIN 2120-AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD-500-1A10 and BD-500-1A11 airplanes. This AD was prompted by production flight test findings of several oxygen masks disconnected from their accompanying portable oxygen bottles. This AD requires inspecting the portable oxygen bottles and reconnecting the masks to the accompanying portable oxygen bottles if

not connected, as specified in a Transport Canada AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 13, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 13, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2024-0466; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Transport Canada material, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888-663-3639; email TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca; website tc.canada.ca/en/aviation.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket at regulations.gov under Docket No. FAA-2024-0466.

FOR FURTHER INFORMATION CONTACT:

Fatin Saumik, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; email fatin.r.saumik@faa.gov.

SUPPLEMENTARY INFORMATION:**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Canada Limited Partnership Model BD-500-1A10 and BD-500-1A11 airplanes. The NPRM published in the **Federal Register** on March 21, 2024 (89 FR 20139). The NPRM was prompted by AD CF-2023-52, dated July 12, 2023 (Transport Canada AD CF-2023-52) (also referred to as the MCAI), issued by Transport Canada, which is the aviation authority for Canada. The MCAI states that during production flight tests, several oxygen

masks were found disconnected from their accompanying portable oxygen bottles. An investigation determined that servicing instructions sent to the supplier did not include reconnecting oxygen masks. Since the problem was discovered, proper procedures were sent to the supplier to reconnect the masks and bottles. If an oxygen mask is not connected to the accompanying portable oxygen bottle, oxygen will not be provided to the cabin crew and/or passengers during a sudden decompression above 10,000 feet or during a first aid situation.

In the NPRM, the FAA proposed to require inspecting the portable oxygen bottles and reconnecting the masks to the accompanying portable oxygen bottles if not connected, as specified in Transport Canada AD CF-2023-52. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA-2024-0466.

Discussion of Final Airworthiness Directive**Comments**

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 14 CFR Part 51

Transport Canada AD CF-2023-52 specifies procedures for a general visual inspection (GVI) on portable oxygen bottles and reconnection of the mask to the accompanying portable oxygen bottles if not connected. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 3 airplanes of U.S. registry. The

FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 1 work-hour × \$85 per hour = Up to \$85.	\$0	Up to \$85	Up to \$255.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2024–12–02 Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Amendment 39–22766; Docket No. FAA–2024–0466; Project Identifier MCAI–2023–00862–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 13, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (Type Certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada AD CF–2023–52, dated July 12, 2023 (Transport Canada AD CF–2023–52).

(d) Subject

Air Transport Association (ATA) of America Code 35, Portable Oxygen System.

(e) Unsafe Condition

This AD was prompted by production flight test findings of several oxygen masks disconnected from their accompanying portable oxygen bottles. The FAA is issuing this AD to ensure oxygen masks are connected to the accompanying portable oxygen bottles. The unsafe condition, if not

addressed, could result in oxygen not being provided to the cabin crew and/or passengers during a sudden decompression above 10,000 feet or during a first aid situation.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada AD CF–2023–52.

(h) Exception to Transport Canada AD CF–2023–52

Where Transport Canada AD CF–2023–52 refers to its effective date, this AD requires using the effective date of this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j) of this AD. Information may be emailed to: 9-AVS-NYACO-COS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or Transport Canada; or Airbus Canada Limited Partnership’s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

For more information about this AD, contact Fatin Saumik, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email fatin.r.saumik@faa.gov.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference

(IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Transport Canada AD CF-2023-52, dated July 12, 2023.

(ii) [Reserved]

(3) For Transport Canada AD CF-2023-52, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888-663-3639; email TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca. You may find this Transport Canada AD on the Transport Canada website at tc.canada.ca/en/aviation.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations, or email fr.inspection@nara.gov.

Issued on June 5, 2024.

Suzanne Masterson,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024-14867 Filed 7-8-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-0043; Project Identifier MCAI-2023-00985-E; Amendment 39-22760; AD 2024-10-14]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd & Co KG (RRD) Trent 1000-A, Trent 1000-AE, Trent 1000-C, Trent 1000-CE, Trent 1000-D, Trent 1000-E, Trent 1000-G, and Trent 1000-H engines. This AD is prompted by reports of cracking and separation of certain low-pressure turbine (LPT) stage 1 blade assemblies. This AD requires initial and repetitive inspections of affected LPT stage 1 blade assemblies for cracking or separation

and, depending on the results of the inspections, reduction of the inspection interval or replacement of the LPT stage 1 blade set and disk. This AD also prohibits the installation of an LPT disk or blade set assembly unless it is considered a serviceable part, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 13, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 13, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-0043; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA service information, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADS@easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-0043.

FOR FURTHER INFORMATION CONTACT:

Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238-7241; email: sungmo.d.cho@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all RRD Model Trent 1000-A, Trent 1000-AE, Trent 1000-C, Trent 1000-CE, Trent 1000-D, Trent 1000-E, Trent 1000-G, and Trent 1000-H engines. The NPRM published in the **Federal Register** on February 01, 2024

(89 FR 6450). The NPRM was prompted by EASA AD 2023-0165, dated August 22, 2023 (EASA AD 2023-0165) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states that manufacturer inspections detected cracking and separation of blade pairs in the weld region of certain LPT stage 1 blade assemblies. A blade assembly consists of a pair of blades welded together at the outer shroud. There are 85 LPT stage 1 blade assemblies in one set. Such cracking and separation could cause failure of affected parts and damage to the LPT module.

In the NPRM, the FAA proposed to require accomplishing the actions specified in EASA AD 2023-0165, except for any differences identified as exceptions in the regulatory text. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-0043.

Discussion of Final Airworthiness Directive

Comments

The FAA received one comment from Boeing, which supported the NPRM without change.

Additional Change Made to This Final Rule

Since the NPRM published, the FAA determined that paragraph (c) of the proposed AD incorrectly included “Rolls-Royce Deutschland Ltd & Co KG Trent 1000.” Therefore, the FAA has revised the applicability of this AD to remove that text. Since there are no additional engines on the U.S. registry, no changes have been made to the Costs of Compliance paragraph in this final rule.

Conclusion

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0165, which specifies procedures for inspection of affected LPT stage 1 blade assembly outer shrouds and replacement of the LPT stage 1 blade set and disk. EASA AD 2023–0165 also

specifies a reduction of the repetitive inspection intervals if cracking or separation is detected and meets certain criteria. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 28 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect LPT stage 1 blade outer shroud	4 work-hours × \$85 per hour = \$340	\$0	\$340	\$9,520

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the inspection. The agency has no way of determining the number of

engines that might need these replacements.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace LPT stage 1 blade set	10 work-hours × \$85 per hour = \$850	\$466,480	\$467,330
Replace LPT stage 1 disk	10 work-hours × \$85 per hour = \$850	256,908	257,758

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a “significant regulatory action” under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2024–10–14 Rolls-Royce Deutschland Ltd & Co KG: Amendment 39–22760; Docket No. FAA–2024–0043; Project Identifier MCAI–2023–00985–E.

(a) Effective Date

This airworthiness directive (AD) is effective August 13, 2024.

(b) Affected Ads

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG Trent 1000–A, Trent 1000–AE, Trent 1000–C, Trent 1000–CE, Trent 1000–D, Trent 1000–E, Trent 1000–G, and Trent 1000–H engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by reports of cracking and separation of certain low-pressure turbine (LPT) stage 1 blade assemblies. The FAA is issuing this AD to prevent failure of the LPT stage 1 blades. The unsafe condition, if not addressed, could result in high energy debris release, damage to the airplane, and reduced control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0165, dated August 22, 2023 (EASA AD 2023–0165).

(h) Exceptions to EASA AD 2023–0165

(1) Where EASA AD 2023–0165 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the Remarks paragraph of EASA AD 2023–0165.

(3) Where the service information referenced in EASA AD 2023–0165 specifies discarding the removed low pressure (LP) turbine stage 1 blade set, this AD requires removing the affected part from service.

(4) Where the service information referenced in EASA AD 2023–0165 specifies to quarantine the removed LP turbine stage 1 rotor disk, this AD requires removing the affected part from service.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0165 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the AIR–520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: *ANE-AD-AMOC@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local Flight Standards District Office/certificate holding district office.

(k) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov*.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0165, dated August 22, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0165, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *Ads@easa.europa.eu*; website: *easa.europa.eu*. You may find this EASA AD on the EASA website at *ad.easa.europa.eu*.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA,

visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*.

Issued on May 16, 2024.

Suzanne Masterson,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

Editorial Note: This document was received for publication by the Office of the Federal Register on July 2, 2024.

[FR Doc. 2024–14945 Filed 7–8–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–0635; Airspace Docket No. 23–AWP–20]

RIN 2120–AA66

Modification of Class E Airspace; Yerington Municipal Airport, Yerington, NV; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a final rule that was published in the **Federal Register** on June 18, 2024. The final rule modified Class E airspace extending upward from 700 feet above the surface at Yerington Municipal Airport, Yerington, NV. This action corrects an error in the airspace legal description.

DATES: Effective 0901 UTC, September 5, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11, Airspace Designations and Reporting Points, and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11H and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Keith Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2428.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (89 FR 51407; June 18, 2024) for Docket FAA–2024–0635,

which modified Class E airspace extending upward from 700 feet above the surface at the Yerington Municipal Airport, Yerington, NV. Subsequent to publication, the FAA identified that line three of the Class E airspace legal description displayed the geographic coordinates for the airport as “lat. 39°00′19″ N, long. 111°09′24″ W,” which was incorrect. The geographic coordinates for the airport in line three of the legal description should be “lat. 39°00′19″ N, long. 119°09′24″ W.” This action corrects the error.

Correction to the Final Rule

In FR Doc 2024–13179 at 51408, published in the **Federal Register** on June 18, 2024, the FAA makes the following corrections:

1. On page 51408, in the third column, correct the first three lines of the legal description for Yerington, NV, to read as follows:

AWP NV E5 Yerington, NV
[Amended]

Yerington Municipal Airport, NV
(Lat. 39°00′19″ N, long. 119°09′24″ W)

Issued in Des Moines, Washington, on July 1, 2024.

B.G. Chew,

Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2024–14859 Filed 7–8–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2024–0361]

RIN 1625–AA08

Special Local Regulation; Back River, Baltimore County, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing special local regulations to provide for the safety of life on certain waters of the Back River, in Baltimore County, MD. These regulations will be enforced during a high-speed power boat event and air show which will be held annually, on the 2nd, 3rd or 4th weekend (Friday, Saturday, and Sunday) in July. This rulemaking prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port, Maryland-National Capital Region, or

the Coast Guard Event Patrol Commander.

DATES: This rule is effective August 8, 2024. A notification of enforcement will be published prior to the event dates each year with specified enforcement dates and times.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0361 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email call or email Petty Officer Hollie Givens, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2596, email MDNCRMarineEvents@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port, Sector Maryland-National Capital Region
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Patrol Commander
§ Section
SLR Special Local Regulations
U.S.C. United States Code

II. Background Information and Regulatory History

Over the years, Tiki Lee’s Dock Bar of Sparrows Point, MD has submitted permit applications under 33 CFR 100.15 for two separate, but concurrently held, annual events in the Back River. These events are “Tiki Lee’s Shootout on the River High Speed Power Boat” event, and “Tiki Lee’s Shootout on the River Air Show.” Tiki Lee’s Dock Bar has indicated that it intends to continue to submit applications annually to hold these events (on the 2nd, 3rd or 4th, Friday, Saturday, and Sunday in July). In response, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Special Local Regulation; Back River, Baltimore County, MD,” 89 FR 34173 (April 30, 2024). There, we explained why we had issued the NPRM and we invited comments on our proposed regulatory action related to this event. During the comment period that ended May 30, 2024, we received one comment.

III. Legal Authority and Need for Rule

The COTP, Maryland-National Capital Region has determined that the potential hazards associated with the high-speed power boat event and air

show will present safety concerns for anyone participating in this event and for spectator vessels and non-affiliated vessels operating within nearby waters of the Back River. The purpose of this rule is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event. The Coast Guard is promulgating this rule under authority in 46 U.S.C. 70041.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published April 30, 2024. This comment discusses the alleged targeting of oystermen and does not address issues within the scope of our published NPRM. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The COTP is establishing special local regulations which may be subject to enforcement in a particular year on the 2nd, 3rd or 4th weekend (Friday, Saturday, and Sunday) in July, depending on when the boat race and air show are held. The regulated area for both events covers all navigable waters of the Back River within an area which is approximately 4,200 yards in length and 1,200 yards in width. Within the regulated area, specific zones are designated as a “Course Area,” a “Buffer zone,” an “Aerobatics Box,” and three “Spectator Areas.” These are the “East Spectator Fleet Area,” the “Northwest Spectator Fleet Area,” and the “Southwest Spectator Fleet Area.”

Consistent with 33 CFR 100.35(a), the COTP is promulgating this regulation, which provides that he or she and the Coast Guard Event PATCOM have authority to forbid or control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area will be required to immediately comply with the directions given by the COTP or Event PATCOM, as is now provided in 33 CFR 100.501(d). If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Only participant vessels would be allowed to enter the course area and aerobatics box. Except for Tiki Lee’s Shootout on the River participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators would be able to request permission to enter and transit

through the regulated area by contacting the Event PATCOM on VHF-FM channel 16. Operators of vessels already at berth desiring to move those vessels when the event is subject to enforcement would be required to obtain permission before doing so.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time of day of the regulated area, which would only impact a small, designated area of Back River. This waterway supports mainly recreational vessel traffic, which at its peak, occurs during the summer season. Although this regulated area extends across the entire width of the waterway, the rule would allow vessels and persons to seek permission to enter the regulated area, and vessel traffic would be able to transit the regulated area as instructed by Event PATCOM. Such vessels must operate at safe speed, one that minimizes wake, and they must not loiter within the navigable channel while within the regulated area. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the enforcement status of the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments

from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Consistent with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we will assist small entities in understanding this rule. If the rule may affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (42 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a

category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. In § 100.501 amend table 4 to paragraph (i)(2) by adding an entry in alphabetical order for “Tiki Lee’s Shootout on the River High Speed Power Boat Event and Air Show” to read as follows:

§ 100.501 Special Local Regulations; Marine Events Within the Fifth Coast Guard District.

* * * * *

(i) * * *

(2) * * *

TABLE 2 TO PARAGRAPH (i)(2)

Event	Regulated area	Enforcement period(s)	Sponsor
* Tiki Lee's Shootout on the River High Speed Power Boat Event and Air Show.	* <i>Regulated area.</i> All navigable waters of Back River, within an area bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14'46" N, longitude 076°26'23" W, thence northeast to Porter Point at latitude 39°15'13" N, longitude 076°26'11" W, thence north along the shoreline to Walnut Point at latitude 39°17'06" N, longitude 076°27'04" W, thence southwest to the shoreline at latitude 39°16'41" N, longitude 076°27'31" W, thence south along the shoreline to and terminating at the point of origin. The course area, aerobatics box and spectator areas are within the regulated area. <i>Course Area.</i> The course area is a polygon in shape measuring approximately 1,400 yards in length by 50 yards in width. The area is bounded by a line commencing at position latitude 39°16'14.98" N, longitude 076°26'57.38" W, thence east to latitude 39°16'15.36" N, longitude 076°26'55.56" W, thence south to latitude 39°15'33.40" N, longitude 076°26'49.70" W, thence west to latitude 39°15'33.17" N, longitude 076°26'51.60" W, thence north to and terminating at the point of origin. <i>Buffer zone.</i> The buffer zone is a polygon in shape measuring approximately 100 yards in east and west directions and approximately 150 yards in north and south directions surrounding the entire course area described in the preceding paragraph of this section. The area is bounded by a line commencing at position latitude 39°16'18.72" N, longitude 076°27'01.74" W, thence east to latitude 39°16'20.36" N, longitude 076°26'52.39" W, thence south to latitude 39°15'29.27" N, longitude 076°26'45.36" W, thence west to latitude 39°15'28.43" N, longitude 076°26'54.94" W, thence north to and terminating at the point of origin. <i>Aerobatics box.</i> The aerobatics box is a polygon in shape measuring approximately 5,000 feet in length by 1,000 feet in width. The area is bounded by a line commencing at position latitude 39°16'01.2" N, longitude 076°27'05.7" W, thence east to latitude 39°16'04.7" N, longitude 076°26'53.7" W, thence south to latitude 39°15'16.9" N, longitude 076°26'35.2" W, thence west to latitude 39°15'13.7" N, longitude 076°26'47.2" W, thence north to and terminating at the point of origin. <i>East Spectator Fleet Area.</i> The area is a polygon in shape measuring approximately 2,200 yards in length by 450 yards in width. The area is bounded by a line commencing at position latitude 39°15'20.16" N, longitude 076°26'17.99" W, thence west to latitude 39°15'17.47" N, longitude 076°26'27.41" W, thence north to latitude 39°16'18.48" N, longitude 076°26'48.42" W, thence east to latitude 39°16'25.60" N, longitude 076°26'27.14" W, thence south to latitude 39°15'40.90" N, longitude 076°26'31.30" W, thence south to and terminating at the point of origin.	* This section will be enforced on the 2nd, 3rd or 4th, Friday, Saturday, and Sunday in July. A Notification of Enforcement will be published 30 days prior to the event dates with specified enforcement times	* Tiki Lee's Dock Bar of Sparrows Point, MD.

TABLE 2 TO PARAGRAPH (i)(2)—Continued

Event	Regulated area	Enforcement period(s)	Sponsor
	<i>Northwest Spectator Fleet Area.</i> The area is a polygon in shape measuring approximately 750 yards in length by 150 yards in width. The area is bounded by a line commencing at position latitude 39°16'01.64" N, longitude 076°27'11.62" W, thence south to latitude 39°15'47.80" N, longitude 076°27'06.50" W, thence southwest to latitude 39°15'40.11" N, longitude 076°27'08.71" W, thence northeast to latitude 39°15'45.63" N, longitude 076°27'03.08" W, thence northeast to latitude 39°16'01.19" N, longitude 076°27'05.65" W, thence west to and terminating at the point of origin. <i>Southwest Spectator Fleet Area.</i> The area is a polygon in shape measuring approximately 400 yards in length by 175 yards in width. The area is bounded by a line commencing at position latitude 39°15'30.81" N, longitude 076°27'05.58" W, thence south to latitude 39°15'21.06" N, longitude 076°26'56.14" W, thence east to latitude 39°15'21.50" N, longitude 076°26'52.59" W, thence north to latitude 39°15'29.75" N, longitude 076°26'56.12" W, thence west to and terminating at the point of origin.		

* * * * *

Patrick C. Burkett,

Captain, U.S. Coast Guard, Captain of the Port, Sector Maryland-National Capital Region.

[FR Doc. 2024–14929 Filed 7–8–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2024–OSERS–0012]

State Personnel Development Grants

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priorities and requirements.

SUMMARY: The Department of Education (Department) announces final priorities and requirements under the State Personnel Development Grants (SPDG) program. The Department may use one or more of these priorities and requirements for competitions in fiscal year (FY) 2024 and later years. We take this action to focus attention on assisting States in reforming and improving their systems for personnel preparation and personnel development in order to improve results for children with disabilities.

DATES: These priorities and requirements are effective August 8, 2024.

FOR FURTHER INFORMATION CONTACT:

Jennifer Coffey, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A10, Washington, DC 20202. Telephone: (202) 987–0150. Email: jennifer.coffey@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the SPDG program is to assist State educational agencies (SEAs) in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services to improve results for children with disabilities.

Assistance Listing Number: 84.323A.
Program Authority: 20 U.S.C. 1451–1455.

We published a notice of proposed priorities and requirements (NPP) for this program in the **Federal Register** on March 28, 2024 (89 FR 21469). That document contained background information and the Department's reasons for proposing the priorities and requirements.

Public Comment: In response to our invitation in the NPP, three parties submitted comments addressing the priorities, requirements, and directed questions. We discuss comments related to the priorities and requirements under each priority to which they pertain. Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us

to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priorities or requirements.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities or requirements since publication of the NPP follows.

Comment: In response to the Department's directed question regarding challenges to developing and supporting grow your own (GYO) programs, one commenter enumerated challenges at the State, district, and participant level. At the State level, the commenter identified the lack of sufficient funding to expand the program and fund personnel to oversee programmatic and fiscal requirements as a major challenge. At the district level, the commenter noted that finding candidates to participate in the programs and securing sufficient funding and resources, including time for oversight, were major challenges, along with the absence of coaching for GYO participants. In addition, the commenter stated that rural districts struggle with a small candidate pool.

The commenter shared that GYO participants have challenges maintaining employment while completing their coursework, are not readily able to pay for tuition, struggle to successfully complete college-level coursework, and have difficulty passing entrance and subject area exams, and managing responsibilities in the home, work duties, and college coursework.

Discussion: The Department appreciates learning about the potential challenges faced at each level of the education system and will provide support to SPDG projects to help ensure they foresee these challenges and provide supports for GYO districts, schools, and participants.

Changes: None.

Comment: In response to the Department's directed question regarding supports that would assist SEAs in developing and implementing career pathways for those interested in becoming fully certified special education teachers, one commenter shared that the following supports would be helpful: funding, additional partners to coordinate program management, exemplar pathway models that include programmatic recommendations, and recruitment and retention resources that support successful program completion. The commenter shared it would be helpful for SEAs to receive technical assistance (TA) and targeted coaching that supports building and implementing pathways for special education personnel.

Discussion: An SEA may use their SPDG resources to provide the supports described by the commenter in the implementation of a GYO, teacher residency, or registered teacher apprenticeship program. As for support for the SEAs, the Department currently provides TA and targeted coaching via the Collaboration for Effective Educator Development, Accountability, and Reform Center (CEEDAR Center).

Changes: None.

Comment: One commenter responded to the Department's question about supports that would help SEAs develop and implement a system to address the professional learning and certification needs of personnel with an emergency certification who work with children with disabilities. The commenter shared that longitudinal studies that track candidates from preparation through their fifth year of teaching and that assess outcomes such as teacher efficacy, teacher retention, and student outcomes would support SEAs in understanding the specific needs of teachers based on various certification pathways. These data would also allow SEAs and their partners to anticipate and create structures to support the professional learning needs of teachers pursuing various certification pathways.

Discussion: We agree that modernized statewide longitudinal data systems (SLDS) can be a valuable tool in identifying and addressing the professional learning and certification needs of personnel, including by

providing the ability to respond to policy needs, such as addressing the professional learning and certification needs of personnel with an emergency certification and understanding the educator pipeline and its impact. We encourage SPDG grantees to take opportunities to modernize their SLDS. To date, 34 States have used SLDS funds to establish linkages between K–12, postsecondary, and workforce data. For more information about SLDS grant opportunities, please visit https://nces.ed.gov/programs/slds/grant_information.asp.

Changes: None.

Comment: In response to the Department's directed question about which stakeholders SEAs should collaborate with to develop and implement a system to address the professional learning and certification needs of personnel with an emergency certification who work with children with disabilities, one commenter stated SEAs should collaborate with educator preparation programs to enhance traditional teacher preparation programs and partner in supporting GYO, teacher residency, and registered teacher apprenticeship programs. The commenter also stated that SEAs should partner with LEAs and professional organizations for education leaders, including special education directors, elementary and secondary school principals, and other school administrators, to identify the needs of teachers and to provide targeted resources and supports.

In addition, the commenter stated that SEAs should engage with national TA centers to stay informed of evidence-based practices for effective pre-service preparation and in-service supports, as well as to partner with their parent and training information center to train teachers on the parent perspective and how to effectively engage and partner with families.

Discussion: The Department thanks the commenter for these thoughtful recommendations. Under section 653(b) of the Individuals with Disabilities Education Act (IDEA), the State personnel development plan must describe how the applicant will work in partnership with agencies and programs addressing the education of children and youth with disabilities to strengthen the project's efforts. The partners suggested by the commenter are all required or permitted partners under section 652(b) of the IDEA, and we agree that they may serve as important collaborators. Additionally, one of the Final Common Requirements is that a project must align with and integrate other State initiatives and programs, as

well as district and local improvement plans, to leverage existing professional development and data systems.

Changes: None.

Comment: One commenter recommended the Department incentivize SEAs to develop programs that include educational audiologists and speech-language pathologists.

Discussion: Educational audiologists and speech-language pathologists are included in the definition of "personnel" used by the SPDG program (section 651(b) of the IDEA). Accordingly, applicants may propose to include educational audiologists and speech-language pathologists in SPDG professional development activities.

Changes: None.

Comment: One commenter recommended that the Department use the SPDG program to incentivize appropriate workloads for personnel, suggesting that using SPDG funds to analyze and right-size educator workload will increase the likelihood that students receive the most appropriate supports to meet their educational and functional goals.

Discussion: SPDG funds are used to address specific State-identified needs. The notice inviting applications for the FY 2024 SPDG competition, published elsewhere in this issue of the **Federal Register**, provides examples of activities that may be funded with an SPDG grant, including the use of funds to support reduced class schedules and caseloads.

Changes: None.

Comment: One commenter, responding to Proposed Priority 1, recommended SEAs and institutions of higher education collaborate to provide grant programs and scholarships for high school students to begin working toward paraprofessional and teacher certification.

Discussion: The SPDG may be used to support collaborative recruitment efforts, including providing grant programs and scholarships for high school students to begin working toward paraprofessional and teacher certification. Per the Final Common Requirements, an applicant must describe the proposed in-State and national partners that the project will work with to achieve the goals and objectives of the grant and how the impact of these partnerships will be measured.

Changes: None.

Comment: One commenter shared that virtual reality simulations may enable pathway participants and other personnel to learn more about teaching children with disabilities and how to navigate complex situations.

Discussion: GYO, apprenticeships, and residency pathways and professional development programs may benefit from the use of virtual reality teaching simulations that allow personnel to practice important skills prior to using them with children. Nothing in Priority 1 would preclude an applicant from proposing to use this technology.

Changes: None.

Comment: Two commenters supported Proposed Priority 1 as a means to develop new and dynamic workforce pathways for the special education workforce system.

Discussion: The Department appreciates support for this priority.

Changes: None.

Comment: In response to Proposed Priority 2, one commenter recommended that SPDG projects use empathy interviews to identify barriers faced by personnel on their path to full certification.

Discussion: We agree that understanding barriers and facilitators to reaching full certification is an important aspect of improving personnel preparation and retention systems. SPDG projects may choose to use empathy interviews to gather formative data to help improve their services.

Changes: None.

Final Priorities

Priority 1: Providing Career Pathways for Those Interested in Becoming Fully Certified Special Education Teachers, Including Paraprofessionals, Through Residency, GYO, and Registered Apprenticeships Programs.

Projects designed to increase the number of fully certified special education teachers by establishing a new, or enhancing an existing, teacher residency, GYO, or registered teacher apprenticeship program that minimizes or eliminates the cost of certification for special education teacher candidates and provides opportunities for candidates to be paid, including being provided with a stipend (which, for programs that include paid experience for the duration of the certification program, can be met through paragraph (i), below), to cover the time spent gaining classroom experience during their certification program.

A project implementing a new or enhanced teacher residency, GYO, or registered teacher apprenticeship program must—

(a) Use data-driven strategies and evidence-based approaches to increase recruitment, successful completion, and retention of the special education teachers supported by the project;

(b) Provide standards for participants to enter into and complete the program;

(c) Be aligned to evidence-based (as defined in 34 CFR 77.1) practices for effective educator preparation;

(d) Have little to no financial burden for program participants, or provide for loan forgiveness, grants, or scholarship programs;

(e) Provide opportunities for candidates to be paid, including being provided with a stipend, to cover time spent in clinical experience during their certification program;

(f) Develop a plan to monitor program quality;

(g) Require completion of a bachelor's degree either before entering or as a result of the teacher residency, GYO, or teacher apprenticeship program;

(h) Result in the satisfaction of all requirements for full State teacher licensure or certification, excluding emergency, temporary, provisional, or other sub-standard licensure or certification;

(i) Provide increasing levels of responsibility for the resident/GYO participant/apprentice during at least one year of paid on-the-job learning/clinical experience, during which a mentor teacher is the teacher of record; and

(j) Develop a plan to ensure the program has funding after the end of the project period.

In their applications, States must describe how their projects will meet these program requirements. In addition to these requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under *Common Requirements*.

Priority 2: Supporting Emergency Certified Special Education Teachers to Become Fully Certified.

Projects designed to increase the number of fully certified special education teachers by implementing plans that address the emergency certification needs of personnel who work with children with disabilities. The plans must—

(a) Identify the barriers and challenges to full certification that are experienced by special education personnel on emergency certifications;

(b) Include evidence-based (as defined in 34 CFR 77.1) strategies to address those barriers and challenges and assist special education personnel on emergency certifications to obtain full certification, consistent with State-approved or State-recognized requirements, within three years;

(c) Include training and coaching on, at a minimum—

(1) The skills needed to collaboratively develop, implement, and monitor standards-based IEPs;

(2) High-leverage and evidence-based instructional and classroom management practices; and

(3) The provision of wrap-around services (e.g., social, emotional, and mental health supports), special education services, and other supports for children with disabilities; and

(d) Provide participating special education personnel on emergency certifications with opportunities to apply the evidence-based skills and practices described in paragraph (c) in the classroom.

In their applications, States must describe how their projects will meet these program requirements. In addition to these requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under *Common Requirements*.

Priority 3: Person-Centered IEPs that Support Instructional Progress.

Projects designed to provide pre-service and in-service training to school and district personnel, including IEP team members (e.g., special education and general education teachers, related service personnel who work with children with disabilities) and administrators, to improve their skills in developing and implementing person-centered IEPs that support instructional progress and improve functional outcomes¹ for children with disabilities. Projects must—

(a) Provide training and coaching to administrators and IEP team members to increase their ability to develop, implement, and monitor person-centered IEPs that support instructional progress so that they can—

(1) Use appropriate data to determine the child's instructional and functional strengths and needs;

(2) Increase the child's learning time and opportunities with general education peers, as appropriate, based on research;

(3) Choose and use evidence-based (as defined in 34 CFR 77.1) practices for core instruction; and

(4) Supplement core instruction with special education services.

In their applications, States must describe how their projects will meet these program requirements. In addition to these requirements, to be considered for funding under this priority, applicants must meet the application

¹ An IEP that supports instructional progress is an IEP that focuses on the academic, vocational, developmental, and social needs of the child and allows the child to benefit from instruction.

and administrative requirements under *Common Requirements*.

Priority 4: Principals as Instructional Leaders Who Support Collaborative Service Provision.

Projects designed to provide professional development to improve the instructional leadership provided by principals and other school leaders, district leaders, and teacher leaders to promote educational equity for children with disabilities. Projects must provide training and coaching to assist administrators to—

(a) Create and support equitable school schedules and other operations that enable collaborative services from general and special education staff;

(b) Support schoolwide inclusionary practices within a multi-tiered systems of support (MTSS) framework;

(c) Support evidence-based (as defined in 34 CFR 77.1) professional development for their staff related to—

(1) Effective content instruction;

(2) Data for decision-making and continuous progress monitoring;

(3) IEP development and implementation; and

(4) Wrap-around services;

(d) Actively engage families and school communities to identify and address concerns regarding, and barriers to, accessibility, equity, and inclusiveness, using frameworks such as universal design; and

(e) Provide administrators structured learning opportunities, such as through a cohort model, mentoring, one-on-one coaching, networking to build a professional community, and applied learning opportunities, such as problem-solving related to the needs of individual children.

In their applications, States must describe how their projects will meet these program requirements. In addition to these requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under *Common Requirements*.

Priority 5: Improving Engagement Between Schools and Families.

Projects designed to develop the capacity of administrators and educators to develop systems and use strategies that build trust and engagement with families, while further strengthening the role families play in their child's development and learning. Projects must—

(a) Provide training and coaching to assist administrators to—

(1) Develop and implement policies and programs that recognize families' funds of knowledge, connect family engagement to student learning, and create welcoming, inviting cultures; and

(2) Create systems that support staff and families in meaningful engagement (i.e., Leading by Convening and the Dual-Capacity Framework. For more information visit www.dualcapacity.org and www.ncsi.wested.org/resources/leading-by-convening);

(b) Provide training and coaching to assist educators and early intervention providers to—

(1) Build their knowledge, attitudes, beliefs, aspirations, and behaviors about effective strategies to engage families in their child's learning;

(2) Work with families to make collaborative, data-based decisions in the development and implementation of the child's IEP; and

(3) Provide information and resources to families that enable them to support their children's learning and behavior at home; and

(c) Provide training and coaching to families so they can—

(1) Meaningfully participate in the development and implementation of their child's IEP;

(2) Participate in data-based decision making related to their child's education; and

(3) Further their child's learning at home.

In their applications, States must describe how their projects will meet these program requirements. In addition to these requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under *Common Requirements*.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a

preference over other applications (34 CFR 75.105(c)(1)).

This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**.

Final Requirements

The Assistant Secretary establishes the following final requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Final Common Requirements

In addition to the requirements contained in these priorities, to be considered for funding, applicants must meet the following application and administrative requirements:

(a) Demonstrate, in the narrative section of the application under "Significance," how the proposed project will—

(1) Align with and integrate other State initiatives and programs, as well as district and local improvement plans, to leverage existing professional development and data systems;

(2) Develop and implement plans to sustain the grant program after the grant funding has ended; and

(3) Integrate family engagement into all project efforts by supporting capacity building for personnel and families.

(b) Demonstrate, in the narrative section of the application under "Quality of Project Services," how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Develop the knowledge and ability of personnel to be culturally responsive and engage children and families with a strengths-based approach;

(ii) Engage students, families, and community members to assess the appropriateness and impact of the intervention, program, or strategies; and

(iii) Review program procedures and resources to ensure a diversity of perspectives are brought into the project; and

(2) Achieve the project's goals and objectives. To meet this requirement, the applicant must provide—

(i) Either a logic model (as defined in 34 CFR 77.1) or theory of action (to be

provided in appendix A), which demonstrates how the proposed project will achieve intended measurable outcomes;

(ii) A description of proposed in-State and national partners that the project will work with to achieve the goals and objectives of the grant and how the impact of these partnerships will be measured; and

(iii) A description of how the project will be based on current research and make use of evidence-based (as defined in 34 CFR 77.1) practices. To meet this requirement, the applicant must describe—

(A) The current research base for the chosen interventions;

(B) The evidence-based model or practices to be used in the project's professional development activities; and

(C) How implementation science will be used to support full and sustained use of evidence-based practices and result in sustained systems of implementation support.

(c) In the narrative section of the application under "Quality of the project evaluation," include an evaluation plan for the project developed in consultation with and implemented by a third-party² evaluator. The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model or theory of action required under paragraph (b)(2)(i) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model or theory of action and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff

assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report to the Department; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under "Adequacy of resources," how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

(e) Demonstrate, in the narrative section of the application under "Quality of the management plan," how the proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(1) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable;

(2) Timelines and milestones for accomplishing the project tasks;

(3) How key project personnel and any consultants and subcontractors will be allocated to the project and how these allocations are appropriate and adequate to achieve the project's intended outcomes; and

(4) How the proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in appendix A, personnel-loading charts and timelines, as

applicable, to illustrate the management plan described in the narrative;

(2) Provide an assurance that any project website will include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility;

(3) Include, in the budget, attendance at the following:

(i) An annual one and one-half day SPDG National Meeting in the Washington, DC area during each year of the project period; and

(ii) A three-day project directors' conference in Washington, DC, during each year of the project period, provided that, if the conference is conducted virtually, the project must reallocate unused travel funds no later than the end of the third quarter of each budget period; and

(4) Budget \$6,000 annually for support of the SPDG program network and website currently administered by the University of Oregon (www.signetwork.org).

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles stated in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

² A "third-party" evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866 (as amended by Executive Order 14094). Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these final priorities and requirements only on a reasoned determination that their benefits justify the costs. In choosing among alternative regulatory approaches, we selected the approach that maximizes net benefits. Based on the analysis that follows, the Department believes that this regulatory

action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

Discussion of Potential Costs and Benefits

The Department believes that the costs associated with the final priorities and requirements will be minimal, while the potential benefits are significant. The Department believes that this regulatory action does not impose significant costs on eligible entities. Participation in this program is voluntary, and the costs imposed on applicants by this regulatory action will be limited to paperwork burden related to preparing an application. The benefits of implementing the program will outweigh the costs incurred by applicants, and the costs of carrying out activities associated with the application will be paid for with program funds. For these reasons, we have determined that the costs of implementation will not be burdensome for eligible applicants, including small entities.

Paperwork Reduction Act of 1995

The final priorities, including requirements, contain information collection requirements that are approved by OMB under OMB control number 1820–0028; the final priorities, including requirements, do not affect the currently approved data collection.

Regulatory Flexibility Act

Certification: The Secretary certifies that this final regulatory action will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government

overseeing a population below 50,000. Participation in the SPDG program is voluntary. In addition, the only eligible entities for this program are SEAs, which do not meet the definition of a small entity. For these reasons, the final priorities and requirements will not impose any additional burden on small entities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of the Department’s specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2024–15047 Filed 7–5–24; 11:15 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION**34 CFR Chapter III****[Docket ID ED–2024–OSERS–0011]****Technical Assistance on State Data Collection—National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Part B Data****AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.**ACTION:** Final priority and requirements.

SUMMARY: The Department of Education (Department) announces a priority and requirements for a National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data (Data Center) under the Technical Assistance on State Data Collection program. The Department may use this priority and one or more of these requirements for competitions in fiscal year (FY) 2024 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the data collection requirements under Part B of the Individuals with Disabilities Education Act (IDEA). This Center will support States in collecting, reporting, and determining how to best analyze and use their data and will customize its TA to meet each State's specific needs.

DATES: The priority and requirements are effective August 8, 2024.

FOR FURTHER INFORMATION CONTACT: Richelle Davis, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A10, Washington, DC 20202. Telephone: (202) 245–6391. Email: Richelle.Davis@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary authority to reserve not more than one-half of one percent of the amounts appropriated under Part B for each fiscal year to provide TA activities, where needed, to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may

reserve under this set-aside for any fiscal year is \$25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. In addition, the Secretary may use funds reserved under section 611(c) of IDEA to “administer and carry out other services and activities to improve data collection, coordination, quality, and use under parts B and C of the IDEA.” Further Consolidated Appropriations Act, 2024, Public Law 118–47, Division D, Title III, 138 Stat. 460, 685 (2024).

Assistance Listing Number (ALN): 84.373Y.

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), 1418(d), 1442; Further Consolidated Appropriations Act, 2024, Public Law 118–47, Division D, Title III, 138 Stat. 460, 685 (2024).

Applicable Program Regulations: 34 CFR 300.702.

We published a notice of proposed priority and requirements (NPP) for this program in the *Federal Register* on March 4, 2024 (89 FR 15525). That document contained background information and our reasons for proposing the priority and requirements.

Public Comment: In response to our invitation in the NPP, nine parties submitted comments addressing the priority and requirements.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priority and requirements.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority and requirements since publication of the NPP follows. We received comments on a number of specific topics, including funding and topics for TA. Each topic is addressed below.

Comments: Multiple commenters specifically expressed support for the proposed center and the proposed objectives.

Discussion: The Department appreciates the comments and agrees with the commenters that the Center funded under this program will provide necessary and valuable TA under the IDEA to States.

Changes: None.

Comments: One commenter proposed a shift towards a more participatory approach to data collection under the IDEA, an approach that would consider the voices and experiences of diverse stakeholders.

Discussion: The Department appreciates the commenter's suggestion and shares their interest in obtaining broad and diverse input regarding the IDEA data collection process. Ultimately, the Department is required to collect these data under section 618 of IDEA. Thus, the participatory data collection methods that the commenter suggested, such as community forums, focus groups, and surveys designed to capture the perspectives and needs of diverse stakeholders, may be helpful as State educational agencies (SEAs) implement their IDEA data collection responsibilities, but are not applicable at this time when the Department's data collection is defined by the IDEA statute.

Changes: None.

Comments: In response to the Department's request for comment on whether it should utilize a phased-in approach for funding this Center, such that the award amount for the initial years of the project would be lower than the later years, the majority of commenters expressed concerns. Commenters specifically noted concerns about the funding level given the turnover and shortages on data staff faced by SEAs and need for the TA the Office of Special Education Programs (OSEP) data centers provide to new data staff, as well as the impact decreased TA would have on data quality.

Discussion: The Department agrees that SEAs are facing significant issues related to shortages and turnover of their data staff. The Department also agrees that a substantial decrease in funding for TA could impact data quality. For this reason, the Department intends to limit any phased-in funding, with smaller awards in the initial years of the project and higher awards in later years (to the extent appropriations under IDEA by Congress permit this flexibility) and still maintain the proposed outcomes and activities.

Changes: None.

Comments: One commenter recommended including specific reference to artificial intelligence (AI) within the administrative requirements,

as it is an increasingly important technology in this field.

Discussion: While we appreciate the commenter's interest in, and support of, AI for the data collection, reporting, and use of IDEA section 618 data, the Department will consider whether and how AI should be incorporated into the TA on data collection when the Department develops the cooperative agreement and during the implementation of the grant.

Changes: None.

Comments: One commenter proposed adding specific outcomes that support data integration efforts across State agencies and federally funded pre-kindergarten through age 21 education programs that would improve States' capacity to use data for programming decisions.

Discussion: The Department appreciates and agrees with the need to support and increase data integration across State agencies. The Department funds the Center on the Integration of IDEA Data (CIID) to specifically support States on how to integrate and better use their Federal data, with a specific focus on the IDEA data (ALN 84.373M). Under the requirements within the priority, applicants must describe how they would collaborate and coordinate with other Department-funded TA investments, such as CIID, to align their work to better meet the purposes of the Center. In order to decrease confusion in the field and the potential overlap of this TA center and CIID, the Department declines to add an additional outcome related to State-level data integration.

Changes: None.

Final Priority

National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data.

The purpose of this priority is to fund a cooperative agreement to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data (Data Center).

The Data Center will provide TA to help States better meet current and future IDEA Part B data collection and reporting requirements, improve data quality, and analyze and use section 616, section 618, and other IDEA data (e.g., State Supplemental Survey-IDEA) to identify and address programmatic strengths and areas for improvement.

The Data Center will provide TA to help States to (1) effectively and efficiently respond to all IDEA-related data submission requirements; (2) improve the analyses of IDEA data to

the extent these analyses respond to critical policy questions that will facilitate program improvement and compliance accountability; and (3) comply with applicable privacy requirements, including the privacy and confidentiality requirements under IDEA and the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and its regulations at 34 CFR part 99.¹

This Data Center will focus on providing TA on collecting, reporting, analyzing, and using Part B data on children with disabilities ages 3 through 21 required under sections 616 and 618 of IDEA. However, the Data Center will not provide TA on Part B data required under section 616 of IDEA for Indicators B7 (Preschool Outcomes) and B12 (Early Childhood Transition); TA on collecting, reporting, analyzing, and using Part B data associated with children with disabilities ages 3 through 5 for these indicators will be provided by the National IDEA Technical Assistance Center on Early Childhood Data Systems, ALN 84.373Z.

The Center must achieve, at a minimum, the following expected outcomes:

(a) Improved State data infrastructure by coordinating and promoting communication and effective data governance strategies among relevant State offices, including State educational agencies (SEAs), local educational agencies (LEAs), and schools to improve the quality of IDEA data required under sections 616 and 618 of IDEA;

(b) Increased capacity of States to submit accurate and timely data, to enhance current State validation procedures, and to prevent future errors in State-reported IDEA Part B data;

(c) Improved capacity of States to meet the data collection and reporting requirements under sections 616 and 618 of IDEA by addressing personnel training needs, developing effective tools (e.g., training modules) and resources (e.g., documentation of State data processes), and providing in-person and virtual opportunities for cross-State collaboration about data collection and reporting requirements that States can use to train personnel in schools, programs, agencies, and districts;

(d) Improved capacity of SEAs, and LEAs in collaboration with SEAs, to collect, report, analyze, and use both

¹ The Center must review the need for additional resources (with input from the Department) and disseminate existing resources developed by the Department, such as: (1) *IDEA/FERPA Crosswalk (Suprenant & Miller, August 24, 2022)*; and (2) Data sharing agreement template (at <https://dasycenter.org/us-dept-ed-shares-idea-data-sharing-mou-template/>).

SEA and LEA IDEA data to identify programmatic strengths and areas for improvement, address root causes of poor performance towards outcomes, and evaluate progress towards outcomes;

(e) Improved IDEA data validation by using results from data reviews conducted by the Department to work with States to generate tools that can be used by States to lead to improvements in the validity and reliability of data required by IDEA and enable States to communicate accurate data to local consumers (e.g., parents and families, school boards, the general public); and

(f) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B data.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This document does not preclude us from proposing additional priorities or requirements, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use this priority and these requirements, we invite applications through a notice in the **Federal Register**.

Final Requirements

The Assistant Secretary establishes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Requirements

Applicants must—

(a) Demonstrate, in the narrative section of the application under “Significance,” how the proposed project will—

(1) Address the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and to increase their capacity to analyze and use section 616 and section 618 data as both a means of improving data quality and identifying programmatic strengths and areas for improvement. To meet this requirement the applicant must—

(i) Demonstrate knowledge of current educational issues and policy initiatives about IDEA Part B data collection and reporting requirements and knowledge of State and local data collection systems, as appropriate;

(ii) Present applicable national, State, and local data to demonstrate the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and use section 616 and section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement; and

(iii) Describe how SEAs and LEAs are currently meeting IDEA Part B data collection and reporting requirements and use section 616 and section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement.

(b) Demonstrate, in the narrative section of the application under “Quality of project services,” how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that products and services meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes, which depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in appendix A) to develop project plans and activities, describing any underlying concepts,

assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: https://osepideasthatwork.org/sites/default/files/2021-12/ConceptualFramework_Updated.pdf and www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.

(4) Be based on current research and make use of evidence-based practices (EBPs).² To meet this requirement, the applicant must describe—

(i) The current research on the capacity of SEAs and LEAs to report and use data, specifically section 616 and section 618 data, as both a means of improving data quality and identifying strengths and areas for improvement; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify and develop the knowledge base on the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and SEA and LEA analysis and use of sections 616 and 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement;

(ii) Its proposed approach to universal, general TA,³ which must identify the intended recipients, including the type and number of

² For purposes of these requirements, “evidence-based practices” (EBPs) means, at a minimum, demonstrating a rationale (as defined in 34 CFR 77.1) based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

³ “Universal, general TA” means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center’s website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,⁴ which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,⁵ which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of SEA personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA and LEA levels;

(C) Its proposed approach to prioritizing TA recipients with a primary focus on meeting the needs of States with known ongoing data quality issues, as measured by the Office of Special Education Programs’ (OSEP’s) review of the quality of the IDEA sections 616 and 618 data;

(D) Its proposed plan for assisting SEAs (and LEAs, in conjunction with SEAs) to build or enhance training systems related to the IDEA Part B data collection and reporting requirements that include professional development based on adult learning principles and coaching;

(E) Its proposed plan for working with appropriate levels of the education system (e.g., SEAs, regional TA

⁴ “Targeted, specialized TA” means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

⁵ “Intensive, sustained TA” means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. “TA services” are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

providers, LEAs, schools, and families) to ensure that there is communication between each level and that there are systems in place to support the capacity needs of SEAs and LEAs to meet Part B data collection and reporting requirements under sections 616 and 618 of the IDEA; and

(F) Its proposed plan for collaborating and coordinating with Department-funded TA investments (e.g., the Center funded under 84.373Z, the Center for IDEA Fiscal Reporting, the Center for the Integration of IDEA Data, the Data Center to Address Significant Disproportionality, and the Weiss Center) and Institute of Education Sciences/National Center for Education Statistics research and development investments, where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of this priority; and

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under “Quality of the project evaluation,” include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.⁶ The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project’s proposed logic model required in paragraph (b)(2)(ii) of these application and administrative requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability

and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report and at the end of Year 2 for the review process; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under “Adequacy of resources and quality of project personnel,” how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project’s intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

(e) Demonstrate, in the narrative section of the application under “Quality of the management plan,” how—

(1) The proposed management plan will ensure that the project’s intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated to the project and how these

allocations are appropriate and adequate to achieve the project’s intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, easily accessible, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements:

(1) Include, in appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee’s project director or other authorized representative;

(ii) A two and one-half day project directors’ conference in Washington, DC, during each year of the project period; and

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project’s intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Provide an assurance that it will maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Include, in appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate; and

⁶ A “third-party” evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

(6) Budget at least 50 percent of the grant award for providing targeted and intensive TA to States.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President’s priorities or the principles stated in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866 (as amended by Executive Order 14094). Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing the final priority and requirements only on a reasoned determination that their benefits justify the costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

Discussion of Potential Costs and Benefits

The Department believes that this regulatory action does not impose significant costs on eligible entities, whose participation in this program is voluntary. While this action does

impose some requirements on participating grantees that are cost-bearing, the Department expects that applicants for this program will include in their proposed budgets a request for funds to support compliance with such cost-bearing requirements. Therefore, costs associated with meeting these requirements are, in the Department’s estimation, minimal.

The Department believes that the benefits to the Federal Government outweigh the costs associated with this action.

Regulatory Alternatives Considered

The Department believes that the priority and requirements are needed to administer the program effectively.

Paperwork Reduction Act of 1995

The final priority, including requirements, contains information collection requirements that are approved by OMB under OMB control number 1820–0028; the final priority, including requirements, does not affect the currently approved data collection.

Regulatory Flexibility Act

Certification: The Secretary certifies that this final regulatory action will not have a significant economic impact on a substantial number of small entities.

The small entities that this final regulatory action will affect are LEAs, including charter schools that operate as LEAs under State law; institutions of higher education; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by this final priority, including requirements, will be limited to paperwork burden related to preparing an application and that the benefits of this final priority will outweigh any costs incurred by the applicant.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the final priority and requirements impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program funds, an eligible entity will evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving a Technical Assistance on State Data Collection program grant. An eligible entity will most likely apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the final priority and requirements will not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of this final regulatory action and the time needed to prepare an application will likely be the same.

This final regulatory action will not have a significant economic impact on a small entity once it receives a grant because it will be able to meet the costs of compliance using the funds provided under this program.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2024–15051 Filed 7–5–24; 11:15 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0524; FRL–11525–02–R9]

Air Plan Revisions; California; Vehicle Inspection and Maintenance Contingency Measure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act (CAA or “Act”), the Environmental Protection Agency (EPA) is taking final action to approve revisions to the California State Implementation Plan (SIP). These revisions concern an amendment to the California motor vehicle inspection and maintenance (I/M) program (also referred to as “Smog Check”) to include a contingency measure that, if triggered, would narrow the Smog Check inspection exemption for newer model year vehicles in certain California nonattainment areas. The EPA is taking final action to approve, as part of the California SIP, the contingency measure and a related statutory provision that authorizes the contingency measure because they meet all the applicable requirements.

DATES: This rule is effective August 8, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2023–0524. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Buss, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; phone: (415) 947–4152; email: buss.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to the EPA.

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- VI. Statutory and Executive Order Reviews

I. Summary of Proposed Action

On December 20, 2023 (88 FR 87981) (“proposed rule”), the EPA proposed to approve a SIP revision concerning an amendment to the California Smog Check program to include a contingency measure to address in part the requirements of CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014 for certain nonattainment areas in California. This contingency measure, if triggered, would narrow the existing Smog Check inspection exemption for newer model year vehicles in certain California nonattainment areas. The SIP revision is titled “California Smog Check Contingency Measure State Implementation Plan Revision” (Released: September 15, 2023) (“Smog Check Contingency Measure SIP”). The Smog Check Contingency Measure itself is presented in Section 4 of the Smog Check Contingency Measure SIP. Other sections of the submission address the contingency measure requirements, discuss the opportunities for the California Air Resources Board (CARB) to adopt contingency measures, provide the background on the California Smog Check program, and present the emission reductions estimates for the ten California nonattainment areas for which the Smog Check Contingency Measure was developed. The appendices included with the Smog Check Contingency Measure SIP include an infeasibility analysis, documentation of emissions estimates, and California Health & Safety Code (H&SC) section 44011(a)(4)(A) and (B), effective October 10, 2017.

In Table 1, we list the Smog Check Contingency Measure SIP and the related statutory provision with the dates they were adopted and submitted by CARB.

TABLE 1—SUBMITTED MEASURE AND STATUTORY PROVISION

Agency	Statute No.	Measure/statutory provision title	Adopted/amended/ revised	Submitted
CARB	Not Applicable	California Smog Check Contingency Measure State Implementation Plan Revision.	October 26, 2023	November 13, 2023.
CARB	California H&SC section 44011(a)(4)(A) and (B)	Certificate of compliance or noncompliance; biennial requirement; exceptions; inspections; exemption from testing for collector motor vehicle.	Effective on October 10, 2017.	November 13, 2023.

In our December 20, 2023 proposed rule, we provided a discussion of the regulatory background leading to CARB's adoption and submission of the Smog Check Contingency Measure SIP. In short, CARB submitted the Smog Check Contingency Measure SIP to address, in part, the contingency measure requirements under CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014 for certain nonattainment areas with respect to certain ozone and fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS).

The applicable nonattainment areas and NAAQS are Coachella Valley (2008 and 2015 ozone NAAQS), Eastern Kern County (2008 and 2015 ozone NAAQS), Mariposa County (2015 ozone NAAQS), Sacramento Metro Area (2008 and 2015 ozone NAAQS), San Diego County (2008 and 2015 ozone NAAQS), San Joaquin Valley (1997, 2008, and 2015 ozone NAAQS; 1997 annual, 2006 24-hour, and 2012 annual PM_{2.5} NAAQS), South Coast Air Basin (2008 and 2015 ozone NAAQS; 2012 annual PM_{2.5} NAAQS), Ventura County (2015 ozone NAAQS), Western Mojave Desert (2008 and 2015 ozone NAAQS) and Western Nevada County (2015 ozone NAAQS).¹

In our proposed rule, we explained that, under the current California Smog Check program, certain vehicles are exempt from the biennial inspection requirement, including vehicles eight or fewer model years old. The Smog Check Contingency Measure, if triggered, will reduce this exemption to vehicles seven or fewer model years old in the nonattainment area(s) at issue upon the first triggering event and to vehicles six or fewer model years old in the nonattainment area(s) at issue upon a

second triggering event. Reducing the inspection exemption will increase the number of inspected and repaired vehicles and therefore result in additional emission reductions.²

Under the Smog Check Contingency Measure, within 30 days of the EPA's determination that a nonattainment area covered by the measure has failed to meet a reasonable further progress (RFP) milestone, meet a qualitative milestone, submit a required quantitative milestone report or milestone compliance demonstration, or attain the relevant NAAQS by the applicable attainment date, CARB will be obligated to transmit a letter to the California Bureau of Automotive Repair (BAR) and the California Department of Motor Vehicles (DMV). CARB's letter will include the necessary finding that providing an exemption from Smog Check for certain vehicles in the area(s) (defined by specified ZIP Codes) at issue will prohibit the State from meeting the State's commitments with respect to the SIP required by the CAA, effectuating a reduction in the Smog Check vehicle inspection exemption to begin with the new calendar year.³

Upon receipt of the CARB letter and the applicable ZIP Codes, CARB, BAR and DMV staff will begin implementation of the change in exemption length to Smog Check and take the following actions:⁴

- DMV will update their Smog Check renewal programing to require a Smog Check inspection for the eight model years old vehicles (or seven model years old vehicles in the case of a second trigger) in the ZIP Codes provided by CARB staff;

- The eight to seven model years old (or seven to six model years old) exemption change will begin for registrations expiring beginning January 1st of the applicable year, considering the time it takes for DMV to program this change and their registration renewal process;

- 60 days before the expiration date of the vehicle registration, DMV will

send out registration renewals that include these newly impacted vehicles along with those already subject to Smog Check inspection;

- The notice will include information on the change in exemptions, reason for change, and resources for obtaining a Smog Check inspection from a certified station;

- CARB staff will work with DMV to develop and include an informational paper that will accompany the registration renewal with the information as included in the notice; and

- BAR and DMV will administer and enforce the new changes to the Smog Check Program.

In our December 20, 2023 proposed rule, we provided our evaluation of the Smog Check Contingency Measure SIP and our rationale for proposing approval.⁵ In short, we found that CARB had met the procedural requirements for SIPs and SIP revisions, found that CARB had adequate legal authority to implement the Smog Check Contingency Measure, and found that the applicable State agencies would have adequate personnel and funding for carrying out the Smog Check Contingency Measure. We also explained how the Smog Check Contingency Measure would be enforceable as required under CAA section 110(a)(2), how the Smog Check Contingency Measure would meet the requirements for an individual contingency measure under CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014, and how approval of the Smog Check Contingency Measure would not interfere with RFP, attainment, or any other applicable requirement of the Act consistent with the requirements under CAA section 110(l). In addition, we presented CARB's estimates of the expected emissions reductions from implementation of the Smog Check Contingency Measure in the various nonattainment areas for the relevant NAAQS for which the measure was developed. We indicated that, based on

¹ Smog Check Contingency Measure SIP, Table 1, at page 3. The Smog Check Contingency Measure SIP lists the various NAAQS by their associated concentration level rather than by the year the EPA promulgated the standard. The various ozone NAAQS addressed by the Smog Check Contingency Measure SIP include the 70 parts per billion (ppb) ozone NAAQS (2015 ozone NAAQS), the 75 ppb ozone NAAQS (2008 ozone NAAQS), the 80 ppb ozone NAAQS (1997 ozone NAAQS), the 15 micrograms per cubic meter (µg/m³) PM_{2.5} NAAQS (the 1997 annual PM_{2.5} NAAQS), the 35 µg/m³ PM_{2.5} NAAQS (the 2006 24-hour PM_{2.5} NAAQS), and the 12 µg/m³ PM_{2.5} NAAQS (the 2012 annual PM_{2.5} NAAQS).

² 88 FR 87981, page 87983.

³ Smog Check Contingency Measure SIP, at pages 16–17.

⁴ Id.

⁵ 88 FR 87981, pages 87983–87987.

our review, we found the estimates to be reasonable and adequately documented.

Last, we explained that we were proposing to approve the Smog Check Contingency Measure SIP as providing an individual contingency measure for the various applicable nonattainment areas and NAAQS, but we were not proposing to make any determination as to whether the Smog Check Contingency Measure SIP would be sufficient by itself for CARB and the relevant air districts to fully comply with the contingency measure SIP requirements in any specific nonattainment area for any specific NAAQS under CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014. We indicated in our proposed rule that we will be evaluating the contingency measure SIP plan elements for compliance with the full SIP requirements under CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014 in the relevant future actions on nonattainment plan SIP submissions for each respective nonattainment area. In these separate actions, we will evaluate the estimated emissions reductions from the Smog Check Contingency Measure, in conjunction with the estimated emission reductions from any other submitted contingency measures for each area and each NAAQS at issue, to determine whether the contingency measures, taken together, provide the requisite emissions reductions or otherwise meet the contingency measure requirements under CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014, as applicable.

Our December 20, 2023 proposed rule contains more information on the Smog Check Contingency Measure SIP and our rationale for proposing approval.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received comments from CARB,⁶ comments from a group comprised of the Central California Environmental Justice Network, Committee for a Better Arvin, Medical Advocates for Healthy Air, and Healthy Environment for All Lives (collectively referred to in this document as "Valley EJ Organizations")⁷ and comments from a group comprised of the Central Valley

Air Quality Coalition, National Park Conservation Association, Little Manila Rising and Valley Improvement Projects (collectively referred to in this document as "CVAQ").⁸ All the comment letters and exhibits can be found in the docket for this rulemaking. In the following paragraphs, we summarize the comments and provide our responses.

CARB Comment #1: CARB indicates that, in the proposed rule, the EPA erroneously indicates that the Smog Check Contingency Measure is designed to achieve the estimated emissions reductions within roughly a year of the triggering event. CARB clarifies that instead, the Smog Check Contingency Measure is designed to achieve emissions reductions as soon as possible within a two-year time frame after the triggering event, recognizing that changes in Smog Check exemptions would begin at the start of a calendar year, that the California DMV will require time to update their systems and notify vehicle owners impacted by the measure, and that triggering events are dependent on the effective date of the EPA action. The California DMV's vehicle registration renewal program cycles annually beginning on January 1st of each year. Thus, CARB explains that, depending upon when the Smog Check Contingency Measure is triggered, when the DMV completes the related systems' update and provides notification to affected vehicle owners, and the length of time left until the beginning of the next calendar year, it could take more than one year to achieve the associated emissions reductions, but that these reductions should occur within two years from an applicable triggering event. CARB believes that this timeline for achieving reductions from the Smog Check Contingency Measure is consistent with the EPA's draft contingency measure guidance concerning the timing of emissions reductions from contingency measures.

EPA Response to CARB Comment #1: The EPA appreciates CARB's clarification of the timeline for when emissions reductions from the measure would be achieved (once triggered). While the timeline for achieving emissions reductions is potentially longer than we described in our proposed rule, we do not find the more extended timeline to present an obstacle to approval of the contingency measure because the reductions occur within two years and CARB's explanation is

reasonable as to why the reductions cannot occur within the first year.

Based on CARB's explanation, we now more fully understand that the California DMV's vehicle registration renewal program cycles annually beginning on January 1st of each year, and thus, if the contingency measure triggering event (*e.g.*, finding of failure to attain the NAAQS by the applicable attainment date) occurs late in the calendar year, DMV will not have time to update its Smog Check renewal programming in the ZIP Codes provided by CARB in time for the registration renewals to be available for mailing to vehicle owners who must renew their registrations in January. If there is insufficient time, then DMV's update to the Smog Check renewal programming will not be reflected in vehicle registration renewal notices until the following January 1st. The EPA understands that as a result of the existing vehicle registration cycle, the full anticipated emission reductions would take longer to achieve, but this is reasonable given the nature of the measure.

In March 2023, the EPA published notice of availability of a new draft guidance addressing the contingency measure SIP requirements in section 172(c)(9) for nonattainment areas generally and in CAA section 182(c)(9) for ozone nonattainment areas classified Serious and higher. This document is entitled "Draft: Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter (DRAFT— 3/17/23— Public Review Version)" (referred to in this document as the "Draft Revised Contingency Measure Guidance"). The EPA provided an opportunity for public comment.⁹ The principal differences between the Draft Revised Contingency Measure Guidance and existing guidance on contingency measures relate to the EPA's recommendations concerning the specific amount of emission reductions that implementation of contingency measures should achieve and the timing for when the emissions reductions from the contingency measures should occur.

With respect to the time period within which reductions from contingency measures should occur, the EPA previously recommended that contingency measures take effect within 60 days of a triggering event, and that the resulting emission reductions generally occur within one year of the triggering event. Under the Draft

⁶ Letter from Steven S. Cliff, Ph.D., Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX, dated January 12, 2024.

⁷ Letter from Brent Newell, Attorney for Central California Environmental Justice Network, Committee for a Better Arvin, Medical Advocates for Healthy Air, and Healthy Environment for All Lives, to Jeffrey Buss and Rory Mays, EPA Region IX, dated January 19, 2024. The letter includes 16 exhibits as attachments.

⁸ Letter from Dr. Catherine Garoupa, Executive Director, CVAQ, et al., to Jeffrey Buss, EPA Region IX, dated January 19, 2024.

⁹ 88 FR 17571 (March 23, 2023).

Revised Contingency Measure Guidance, in instances where there are insufficient contingency measures available to achieve the recommended amount of emissions reductions within one year of the triggering event, the EPA believes that contingency measures that provide reductions within two years of the triggering event would be appropriate to consider toward achieving the recommended amount of emissions reductions. We think that contingency measures that result in additional emissions reductions during the second year following the triggering event, as contemplated by the Draft Revised Contingency Measure Guidance, would still serve the important purpose of contingency measures to continue progress towards attainment, as the State develops and submits, and the EPA acts on, a SIP submission to address the underlying deficiency.¹⁰

As discussed in our Draft Revised Contingency Measure Guidance document, we believe that reductions from contingency measures should be achieved as soon as possible. If an air agency elects to adopt contingency measures that will require more than one year from the triggering event to achieve the full amount of necessary reductions, then it should provide an adequate explanation of why the reductions could not be achieved within the first year and how much additional time is needed (up to one additional year).¹¹ We find that CARB's clarification of the timeline for achieving full emissions reductions from the Smog Check Contingency Measure (summarized in CARB Comment #1) adequately explains why the reductions may not be fully achieved until the second year after the triggering event.

CARB Comment #2: CARB disagrees with the EPA's presentation in Table 2 of the proposed rule of the emissions reductions estimates for the Smog Check Contingency Measure in the applicable nonattainment areas for the relevant NAAQS. Specifically, CARB contends that the EPA should not have discounted the emissions reductions calculated for implementation of the Smog Check Contingency Measure by the potentially foregone emissions reductions calculated from the reduction in Carl Moyer Memorial Air Quality Standards Attainment Program ("Carl Moyer Program")¹² funding due to decreased funding from the Smog Check abatement fee that would result from the narrowing of the Smog Check inspection exemption for newer model year vehicles.¹³ CARB asserts that the estimated potential loss in reductions from the foregone Carl Moyer Program funding should not be factored into the estimated reductions from the Smog Check Contingency Measure.

CARB explains that the estimated emissions reductions from the Smog Check Contingency Measure are calculated from CARB's current baseline SIP emissions inventory, while potential reductions from anticipated future projects funded through the Carl Moyer Program are not accounted for in baseline SIP inventories. Although the Smog Check Contingency Measure's impact on funding for the Carl Moyer Program is described as a potential emissions disbenefit, CARB indicates that the information was included only to better inform the public of potential impacts and should not be accounted for in the calculated emissions reductions for the Smog Check Contingency Measure. CARB contends that the emissions reductions listed in the table titled "Potential Reductions

from Measure" for each nonattainment area in Section 5 of the Smog Check Contingency Measure SIP are the correct estimates for the Smog Check Contingency Measure.

EPA Response to CARB Comment #2: We do not agree that the overall estimate of emissions reductions from the Smog Check Contingency Measure should not take into account reasonably foreseeable emissions consequences. However, upon reconsideration, we agree with CARB that the foregone emissions reductions calculated by CARB resulting from reduced Carl Moyer Program funding should not be taken into account when evaluating the emissions reductions from the Smog Check Contingency Measure because the timing of the reduced funding and its impact on emissions reductions would not occur during the two-year implementation period for the Smog Check Contingency Measure.¹⁴

The reduced funding that would follow the triggering of the contingency measure would potentially affect emissions-reducing projects three or more years following the triggering event, based on the typical timeline for issuing grants and implementing emissions-reducing projects using Carl Moyer Program funding. This conclusion is based on information on implementation of the Carl Moyer Program provided by CARB.¹⁵

We, therefore, have re-published Table 2 from the proposed rule without accounting for the predicted emissions impacts from corresponding reductions in funds paid into the Carl Moyer Program, and find the amounts in Table 2 to be reasonable estimates of the emissions reductions from the Smog Check Contingency Measure for the applicable nonattainment areas and relevant NAAQS.

TABLE 2—REVISED ESTIMATED EMISSIONS REDUCTIONS FROM SMOG CHECK CONTINGENCY MEASURE

Nonattainment area	Applicable NAAQS	Analysis year	Emissions reductions (tons per day) ^a	
			NO _x	VOC
Coachella Valley	2008 Ozone NAAQS	2031	0.008	0.003
	2015 Ozone NAAQS	2037	0.008	0.003
Eastern Kern County	2008 Ozone NAAQS	2026	0.003	0.001

¹⁰ Draft Revised Contingency Measure Guidance, page 41.

¹¹ Id.

¹² The Carl Moyer Program provides grant funding for cleaner-than-required engines, equipment, and other sources of air pollution. The Carl Moyer Program is implemented as a partnership between CARB and California's 35 local air districts.

¹³ As explained on page 1 of the Smog Check Contingency Measure SIP, the California Smog Check program allows vehicles eight or less model-

years old to be exempt from requirements for Smog Check inspections. In lieu of an inspection, this law requires seven and eight model-year old vehicle owners to pay an annual Smog Abatement Fee of \$25, \$21 of which goes to the Air Pollution Control Fund for use to incentivize clean vehicles and equipment through the Carl Moyer Program. Narrowing of the inspection exemption for such vehicles would reduce Smog Abatement fee funds collected.

¹⁴ For perspective, we note, based on CARB's estimated emissions reductions from the Smog

Check Contingency Measure and foregone emissions reductions from reduced Carl Moyer Program funding presented in Section 5 of the Smog Check Contingency Measure SIP, that the foregone emissions reductions are about one, to more than two, orders of magnitude lower than the emissions reductions from implementation of the Smog Check Contingency Measure.

¹⁵ See email from Ariel Fideldy, Manager, CARB, dated February 16, 2024.

TABLE 2—REVISED ESTIMATED EMISSIONS REDUCTIONS FROM SMOG CHECK CONTINGENCY MEASURE—Continued

Nonattainment area	Applicable NAAQS	Analysis year	Emissions reductions (tons per day) ^a	
			NO _x	VOC
Mariposa County	2015 Ozone NAAQS	2032	0.003	0.001
	2015 Ozone NAAQS	2026	0.0003	0.0001
	2008 Ozone NAAQS	2024	0.077	0.037
Sacramento Metro	2015 Ozone NAAQS	2032	0.047	0.015
	2008 Ozone NAAQS	2026	0.065	0.027
San Diego County	2015 Ozone NAAQS	2032	0.056	0.016
	1997 Ozone NAAQS	2023	0.112	0.056
San Joaquin Valley	2008 Ozone NAAQS	2031	0.079	0.025
	2015 Ozone NAAQS	2037	0.076	0.024
	1997 Annual PM _{2.5} NAAQS	2023	0.117	0.052
	2006 24-Hour PM _{2.5} NAAQS	2024	0.120	0.052
	2012 Annual PM _{2.5} NAAQS	2030	0.086	0.027
South Coast Air Basin	2008 Ozone NAAQS	2029	0.295	0.096
	2015 Ozone NAAQS	2035	0.254	0.077
	2012 Annual PM _{2.5} NAAQS	2030	0.300	0.093
Ventura County	2015 Ozone NAAQS	2026	0.013	0.005
West Mojave Desert	2008 Ozone NAAQS	2026	0.021	0.009
	2015 Ozone NAAQS	2032	0.018	0.006
Western Nevada County	2015 Ozone NAAQS	2026	0.002	0.001

^a Emissions estimates shown in this table are summarized from information presented in section 5 of the Smog Check Contingency Measure SIP. For ozone nonattainment areas, the estimates represent summer planning season values. For PM_{2.5} nonattainment areas, the estimates represent annual average values.

Valley EJ Organizations Comment #1: Citing 40 CFR 52.220(c)(396)(ii)(A)(2)(i), Valley EJ Organizations assert that CARB submitted the Smog Check Contingency Measure SIP to comply with a Court order and the approved SIP, which require CARB to adopt and submit contingency measures for the 1997 8-hour ozone NAAQS meeting the requirements of section 172(c)(9) of the Act.¹⁶ Valley EJ Organizations contend, however, that the EPA has proposed approval of the Smog Check Revision without deciding whether the emissions reductions the Smog Check Contingency Measure achieves comply with either the EPA's current interpretation of the Act with respect to contingency measures or the EPA's proposed Draft Revised Contingency Measure Guidance. Valley EJ Organizations further assert that the EPA fails to acknowledge or explain why it proposes to defer action for contingency measures for the 1997 8-hour ozone NAAQS in the San Joaquin Valley when the EPA has already approved the 2007 Ozone Plan, including contingency measures, and has approved the commitment by CARB to adopt and submit the contingency measures.¹⁷

¹⁶ The approved SIP in this instance refers to the San Joaquin Valley 2007 Ozone Plan and related documents and includes a commitment that CARB made to submit attainment contingency measures for San Joaquin Valley for the 1997 ozone NAAQS.

¹⁷ Valley EJ Organizations refer to the EPA's final action on the San Joaquin Valley attainment plan for the 1997 ozone NAAQS (2007 Ozone Plan) at 77 FR 12652, 12670 (March 1, 2012) and 40 CFR 52.220(c)(396)(ii)(A)(2)(i).

EPA Response to Valley EJ Organizations Comment #1: The EPA agrees that CARB submitted the Smog Check Contingency Measure SIP for several purposes. First, CARB submitted the Smog Check Contingency Measure SIP to address, in part, the contingency measure SIP requirements for certain nonattainment areas for certain NAAQS. The relevant areas and NAAQS that CARB addressed in the Smog Check Contingency Measure SIP include 10 nonattainment areas for the 2015 ozone NAAQS, seven areas for the 2008 ozone NAAQS, two areas for the 2012 PM_{2.5} NAAQS, one area for the 1997 and 2006 PM_{2.5} NAAQS and one area for the 1997 ozone NAAQS.¹⁸ The San Joaquin Valley is the one nonattainment area for the 1997 ozone NAAQS to which the Smog Check Contingency Measure SIP applies.

Second, CARB submitted the Smog Check Contingency Measure SIP to respond to recent court actions to meet statutory deadlines related to contingency measures.¹⁹ In connection with one of the recent court actions, CARB submitted the Smog Check Contingency Measure SIP to respond to a Court order²⁰ compelling CARB to fulfill CARB's commitment to develop, adopt and submit attainment

¹⁸ Smog Check Contingency Measure SIP, page 3.

¹⁹ Smog Check Contingency Measure SIP, page 1.

²⁰ *Central California Environmental Justice Center v. Randolph*, E.D. Cal., 22-cv-01714, ECF Nos. #41 and #52.

contingency measures²¹ meeting the requirements of CAA section 172(c)(9) that the EPA approved in connection with the approval of the San Joaquin Valley ozone attainment plan for the 1997 ozone NAAQS.²² In this final action, we are not determining whether the Smog Check Contingency Measure SIP fulfills CARB's commitment, but we are approving the Smog Check Contingency Measure SIP as providing an individual contingency measure for San Joaquin Valley for the 1997 ozone NAAQS, among other areas and other NAAQS.

In our proposed rule, we acknowledged that we are not, in this action, making a determination as to whether the State and relevant District have fully met the contingency measure SIP requirements under CAA sections 172(c)(9) or 182(c)(9) in any given area, but rather, we explained that we are taking action to approve the Smog Check Contingency Measure SIP as providing an individual contingency measure for the various nonattainment areas and NAAQS to which the SIP applies.²³ We indicated that we will be

²¹ Under CAA sections 172(c)(9), States required to make an attainment plan SIP submission must include contingency measures to be implemented if the area fails to meet RFP ("RFP contingency measures") or fails to attain the NAAQS by the applicable attainment date ("attainment contingency measures"). Unless otherwise indicated, references to "contingency measures" in this document do not distinguish between the two types of contingency measures.

²² 77 FR 12652 (March 1, 2012); 40 CFR 52.220(c)(396)(ii)(A)(2)(i).

²³ 88 FR 87981, page 87987.

acting on the full contingency measure SIP plan elements in the relevant nonattainment plan SIP submissions for the respective areas and NAAQS in separate rulemakings and will consider the emissions reductions associated with the Smog Check Contingency Measure in conjunction with the reductions from other submitted contingency measures, at that time.²⁴ An example of such a separate rulemaking is our recent proposed approval of the San Joaquin Valley PM_{2.5} contingency measure SIP element in which we are proposing to approve the components that comprise the contingency measure plan, collectively, as meeting the requirements for contingency measures for the San Joaquin Valley for the various PM_{2.5} NAAQS under CAA section 172(c)(9) and 40 CFR 51.1014.²⁵ As part of our evaluation and proposed approval, we are taking into account the emissions reductions presented in the Smog Check Contingency Measure SIP for the San Joaquin Valley for the 1997, 2006 and 2012 PM_{2.5} NAAQS.²⁶

We have taken this approach of acting on the Smog Check Contingency Measure as an individual contingency measure separately from acting on the contingency measure element for each given nonattainment area, consistent with CARB's conceptual design for the Smog Check Contingency Measure SIP, which anticipates that the Smog Check Contingency Measure would, if triggered, change the exemptions for motor vehicles under the California Smog Check Program for the relevant local nonattainment area and NAAQS, and that, together with the local air districts' contingency measures, address the contingency measure requirements of the Act.²⁷ In future actions, we will evaluate whether CARB and the relevant District have addressed the full contingency measure SIP element requirements of the CAA by considering the emissions reductions attributed to the Smog Check Contingency Measure taken together with each local air districts' additional submitted contingency measures, along with any infeasibility justifications that may also be submitted.

Our evaluation of the Smog Check Contingency Measure SIP as an individual contingency measure included a review of the Smog Check Contingency Measure itself for

compliance with the requirements for individual contingency measures as set forth in CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014. In short, we found that that the Smog Check Contingency Measure is designed to be both prospective and conditional, that the Smog Check Contingency Measure includes an appropriate triggering mechanism, that the narrowing of the exemption for newer vehicles from Smog Check inspections is not required for any other CAA purpose, that the emissions reductions from the Smog Check Contingency Measure are not included in any RFP or attainment demonstration in any of the applicable nonattainment areas, that the Smog Check Contingency Measure is structured so as to be implemented in a timely manner without significant further action by the State or EPA and that the Smog Check Contingency Measure is designed to achieve the estimated emissions reductions within roughly a year of the triggering event.²⁸

As summarized in CARB Comment #1, CARB has explained why the Smog Check Contingency Measure is designed to achieve the estimated emissions reductions within two years of the triggering event, but not necessarily within a year of the triggering event. As discussed in EPA Response to CARB Comment #1, we find CARB's explanation to be adequate and that the timeline for achieving the emissions reductions from the Smog Check Contingency Measure to be acceptable for the purposes of CAA section 172(c)(9). For these reasons, we find that the Smog Check Contingency Measure meets the requirements for individual contingency measures.

With one exception, we expect the Smog Check Contingency Measure SIP to be supplemented by additional SIP revisions that, considered together, will be evaluated for compliance with the contingency measure SIP element requirement for each nonattainment area and NAAQS to which the Smog Check Contingency Measure applies. The one exception is the San Joaquin Valley for the 1997 ozone NAAQS.

We acknowledge that, in the proposed rule, we did not include a specific discussion of the implications of our proposed action with respect to the contingency measure SIP planning requirements for the 1997 ozone NAAQS for the San Joaquin Valley. Unlike the other nonattainment areas, we also acknowledge that, as the EJ Valley Organizations assert, the EPA has already taken action on the contingency measure element for San Joaquin Valley

for the 1997 ozone NAAQS.²⁹ We approved the contingency measure element, in part, in reliance on CARB's commitment to adopt and submit contingency measures to comply with the contingency measure SIP requirements under CAA section 172(c)(9) as those requirements relate to a potential failure to attain the 1997 ozone NAAQS by the applicable attainment date.³⁰ CARB submitted the Smog Check Contingency Measure SIP to, among other reasons, fulfill the commitment made by CARB in connection with the EPA's approval of the San Joaquin Valley plan for the 1997 ozone NAAQS.

In this action, we are approving the Smog Check Contingency Measure as a contingency measure for the San Joaquin Valley for the 1997 ozone NAAQS, along with the other areas and NAAQS. But, we will be taking separate action on the Smog Check Contingency Measure SIP to evaluate whether the Smog Check Contingency Measure SIP fulfills the attainment-related contingency measure requirements under CAA section 172(c)(9) for the San Joaquin Valley for the 1997 ozone NAAQS. The CAA establishes a deadline for EPA action on SIP submissions of 12 months from the determination of completeness.³¹ We issued our completeness determination for the Smog Check Contingency Measure SIP in our December 20, 2023 proposed rule.³²

Valley EJ Organizations Comment #2: Valley EJ Organizations assert that the EPA fails to decide whether the Smog Check Contingency Measure SIP complies with the existing SIP and the CAA with respect to the amount of emissions reductions achieved for the 1997 ozone NAAQS. Citing CAA section 172(c)(9), the Valley EJ Organizations contend that this violates the plain meaning of the Act's contingency measures provision and is arbitrary and capricious because contingency measures must be fully adopted, ready for implementation, and included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator. The Valley EJ Organizations also contend that the EPA must act on the Smog Check Contingency Measure SIP so that the Smog Check Contingency Measure is part of the plan, no further action by the EPA is pending, and the measure is

²⁴ *Id.*, pages 87987 and 87988.

²⁵ 88 FR 87988 (December 20, 2023).

²⁶ 88 FR 87988, 88003–88005 (December 20, 2023).

²⁷ Smog Check Contingency Measure SIP, pages 11 and 12.

²⁸ 88 FR 87981, pages 87985 and 87986.

²⁹ 77 FR 12652 (March 1, 2012).

³⁰ 77 FR 12652, 12670 (March 1, 2012); 40 CFR 52.220(c)(396)(ii)(A)(2)(i).

³¹ CAA section 110(k)(2).

³² 88 FR 87981, page 87982.

ready for implementation upon a failure to attain the standard by the applicable attainment date for San Joaquin Valley for the 1997 ozone NAAQS, *i.e.*, June 15, 2024. The Valley EJ Organizations assert that, without EPA action to determine that the Smog Check Contingency Measure SIP meets the requirements for contingency measures for San Joaquin Valley for the 1997 ozone NAAQS, the Smog Check Contingency Measure will not be part of the SIP, not ready to take effect without further action by the EPA, and not federally enforceable.

EPA Response to Valley EJ Organizations Comment #2: As discussed in more detail in EPA Response to Valley EJ Organizations Comment #1, the EPA is taking action to approve the Smog Check Contingency Measure SIP as providing an individual contingency measure that meets the applicable requirements for a contingency measure. As noted by the Valley EJ Organizations, the EPA is not, in this action, determining whether the San Joaquin Valley has met the contingency measure requirements for the 1997 ozone NAAQS. However, this does not mean that the Smog Check Contingency Measure itself will not be approved as part of the California SIP or federally enforceable.

Upon the effective date of our final action to approve the Smog Check Contingency Measure SIP, the Smog Check Contingency Measure will be federally enforceable as a part of the approved California SIP. This means that the Smog Check Contingency Measure will be triggered in San Joaquin Valley if the EPA determines that the San Joaquin Valley failed to attain the 1997 ozone NAAQS by the June 15, 2024, applicable attainment date.

Our finding in this regard is based on the language in CARB Resolution 23–20, adopting the Smog Check Contingency Measure as a revision to the California SIP, conditioned upon the EPA's final approval of the Smog Check Contingency Measure as a contingency measure under the CAA.³³ In our action today, we are approving the Smog Check Contingency Measure as a contingency measure under the CAA for the various nonattainment areas and NAAQS addressed by the Smog Check Contingency Measure SIP.

Valley EJ Organizations Comment #3: Valley EJ Organizations object to the EPA's proposed approval of the Smog Check Contingency Measure SIP as arbitrary, capricious and an abuse of discretion because the emissions

reductions associated with the Smog Check Contingency Measure for the San Joaquin Valley for the 1997 ozone NAAQS are far below the magnitude of emissions reductions that Valley EJ Organizations assert are required for San Joaquin Valley to meet the contingency measures SIP requirement under the CAA. Valley EJ Organizations also object to the proposed approval of the Smog Check Contingency Measure SIP on the grounds that approval of the contingency measure with respect to the 1997 ozone NAAQS would violate the anti-backsliding bar in CAA section 110(l) by weakening the amount of reductions required by the commitment CARB made, and EPA approved, as part of the San Joaquin Valley SIP for the 1997 ozone NAAQS. According to Valley EJ Organizations, the commitment that CARB made in connection with the EPA's approval of the San Joaquin Valley ozone SIP can only be achieved through contingency measures that would achieve collectively one year's worth of RFP, the EPA's interpretation (at the time of the EPA's approval of the commitment) of the amount of emissions reductions contingency measures should achieve to meet the CAA requirements for contingency measures for a given nonattainment area. Under this premise, Valley EJ Organizations contend that approval of the Smog Check Contingency Measure, which would reduce emissions (if triggered) by far less than one year's worth of RFP would be prohibited under CAA section 110(l). In the alternative, Valley EJ Organizations assert that the EPA has unlawfully and arbitrarily failed to consider and make a finding with respect to whether the approval of the Smog Check Contingency Measure SIP with respect to the 1997 8-hour ozone standard constitutes illegal backsliding.

EPA Response to Valley EJ Organizations Comment #3: As discussed in more detail in EPA Response to Valley EJ Organizations Comment #1, the EPA is taking action to approve the Smog Check Contingency Measure SIP as providing an individual contingency measure that meets the applicable requirements for individual contingency measures. The EPA is not, in this action, determining whether the San Joaquin Valley has fully met the contingency measure requirements for the 1997 ozone NAAQS. Thus, the EPA has not yet determined whether the emissions reductions from the Smog Check Contingency Measure suffice, on its own, to meet the contingency measure requirements for the San Joaquin Valley for the 1997 ozone

NAAQS. We will be taking another separate action on the Smog Check Contingency Measure SIP and will evaluate the emissions reductions associated with the Smog Check Contingency Measure, as well as CARB's infeasibility justification for adopting the Smog Check Contingency Measure as the sole contingency measure for San Joaquin Valley for the 1997 ozone NAAQS, at that time.

Lastly, in our proposed rule, we did review the Smog Check Contingency Measure SIP for compliance with CAA section 110(l).³⁴ In short, and in light of the scope of this rulemaking, *i.e.*, to evaluate the Smog Check Contingency Measure SIP as providing an individual contingency measure, we found that the Smog Check Contingency Measure, if triggered, would result in additional emissions reductions beyond those included in the RFP and attainment demonstration for the applicable nonattainment areas. Thus, we proposed to find that the approval of the Smog Check Contingency Measure SIP itself is consistent with CAA section 110(l) and would not interfere with RFP, attainment or any other applicable requirement of the Act.³⁵ We are finalizing that finding in this final action.

CVAQ Comment #1: CVAQ asserts that the EPA has no authority to approve contingency measures that provide less than one year's worth of RFP and has no authority to adopt a feasibility-based exemption that conditions contingency measures on their technological or economic infeasibility for polluters. CVAQ states that San Joaquin Valley residents need measures that will result in significant reductions that put health at the forefront, and the Smog Check Contingency Measure would only reduce around 0.1 tpd of NO_x or less in the San Joaquin Valley. This is, according to CVAQ, especially problematic for the 1997 8-hour ozone NAAQS, which the San Joaquin Valley will fail to attain in six months, and the Smog Check Contingency Measure is the only contingency measure California has adopted for that NAAQS. CVAQ asserts that the EPA's interpretation of the contingency measure requirements only benefits industry to the detriment of some of the nation's most impacted communities, and that the EPA's actions run counter to the Biden Administration's commitment to environmental justice and Civil Rights.

EPA Response to CVAQ Comment #1: In this rulemaking, the EPA is

³³ CARB Resolution 23–20 (October 26, 2023), page 5.

³⁴ 88 FR 87981, page 87986.

³⁵ *Id.*

approving the Smog Check Contingency Measure as an individual contingency measure because the measure has the necessary attributes of a CAA contingency measure,³⁶ but the EPA is not making any determination in this action as to whether the Smog Check Contingency Measure alone is sufficient to meet fully the contingency measure SIP requirements of CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014 in any particular nonattainment area for any particular NAAQS. As noted in our proposed rule, we will be acting on the contingency measure SIP plan elements in the relevant nonattainment plan SIP submissions for the respective areas and NAAQS in separate rulemakings and will consider the emissions reductions associated with the Smog Check Contingency Measure at that time.³⁷ In future actions on area-specific contingency measure elements, the EPA will take into account the amount of emissions reductions from the contingency measures for a given area and evaluate the approvability of the contingency measure element as a whole, including any relevant justifications for a contingency measure or measures that does not, or do not, provide for the recommended amount of emissions reductions.

CVAQ Comment #2: CVAQ contends that the Smog Check Contingency Measure would impose the burden of compliance costs on San Joaquin Valley residents who fall under the highest socioeconomic disadvantages in the State, further contradicting the Biden Administration's commitment to environmental justice and Civil Rights. CVAQ also contends that adopting the proposed weak contingency measure goes against this commitment by refusing to hold the region's largest polluters accountable, discounting community priorities and continuing racist polluting practices.

EPA Response to CVAQ Comment #2: The burden for compliance with the Smog Check Contingency Measure would fall on owners of motor vehicles seven or eight model years old. Using DMV vehicle registration data, CARB staff found that, in all the subject nonattainment areas, the proportion of vehicle owners potentially impacted in

Disadvantaged Communities (DACs)³⁸ by the Smog Check Contingency Measure, if triggered, is about equal to the proportion of vehicle owners potentially impacted in the nonattainment area as a whole.³⁹ According to CARB's findings, the burden of compliance and the environmental benefits of the Smog Check Contingency Measure will not disproportionately impact DACs in the nonattainment areas.

As part of CARB's evaluation of the impacts of the Smog Check Contingency Measure, CARB noted that repair costs under the Smog Check program vary, but generally cost \$750 on average, which could be a significant cost burden.⁴⁰ However, CARB also noted that financial assistance for repairs is available for income-eligible vehicle owners through BAR's Consumer Assistance Program, which provides up to \$1,200 for repair costs.⁴¹ To be eligible for financial assistance, a vehicle owner must have a gross household income less than or equal to 225% of the Federal poverty level. This financial assistance program should help to address CVAQ's concern about the burden of compliance costs for those eligible households.

III. Environmental Justice Considerations

This document takes final action to approve the Smog Check Contingency Measure SIP that CARB submitted to address, in part, contingency measure SIP requirements for certain nonattainment areas in California for the ozone and PM_{2.5} NAAQS. Information on ozone and PM_{2.5} and their relationship to negative health impacts can be found on the EPA's website.

Environmental justice (EJ) is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. As explained in the EJ Legal Tools to Advance Environmental Justice 2022 document,⁴² the CAA provides States

with the discretion to consider environmental justice in developing rules and measures related to nonattainment area SIP requirements, including contingency measures.

In this instance, CARB exercised this discretion and evaluated environmental justice considerations as part of its SIP submission.⁴³ CARB analyzed whether there would be disproportionate impact on disadvantaged communities within the affected nonattainment areas if the contingency measure were triggered and analyzed the impacts of the contingency measure on vehicle owners in disadvantaged communities.⁴⁴ Based on the results of these analyses, CARB concluded that the Smog Check Contingency Measure is consistent with CARB's environmental justice policies and would not disproportionately impact people of any race, culture, income, or national origin.⁴⁵

In reviewing CARB's analysis, the EPA defers to CARB's reasonable exercise of its discretion in considering EJ in this way. The EPA is taking final action to approve the Smog Check Contingency Measure SIP because it meets minimum requirements pursuant to the CAA and relevant implementing regulations. The EPA also finds that consideration of EJ analyses in this context is reasonable. The EPA encourages air agencies generally to evaluate environmental justice considerations of their actions and carefully consider impacts to communities. The EJ analyses submitted by CARB were considered but were not the basis for the EPA's decision to approve the Smog Check Contingency Measure SIP as meeting the minimum applicable requirements.

IV. EPA Action

Pursuant to section 110(k)(3) of the CAA, and for the reasons provided in our December 20, 2023 proposed rule and in the responses to comments provided in this document, the EPA is taking final action to approve the Smog Check Contingency Measure SIP and a related statutory provision (*i.e.*, California H&SC section 44011(a)(4)(A) and (B), operative October 10, 2017). Our action is based on our finding that the Smog Check Contingency Measure SIP meets the applicable procedural and substantive CAA requirements for SIP revisions; that the Smog Check Contingency Measure itself meets applicable requirements for a valid

³⁶ As discussed on pages 87985 and 87986 of our proposed rule, the necessary attributes for individual contingency measures include being designed to be prospective and conditional, to include appropriate triggering mechanisms, to not being required for any other CAA purpose, to being designed to be implemented in a timely manner without significant further action by the State or the EPA, and to achieve emissions reductions within a year or two of the triggering event.

³⁷ 88 FR 87981, pages 87987 and 87988.

³⁸ DAC is defined under State law, namely Senate Bill 535, as census tracts receiving the highest 25 percent of overall scores in CalEnviroScreen 4.0. See Smog Check Contingency Measure SIP, page 18.

³⁹ Smog Check Contingency Measure SIP, page 19.

⁴⁰ *Id.*

⁴¹ For more information, visit <https://www.bar.ca.gov/consumer/consumer-assistance-program>. In addition, the SJVUAPCD operates its own "Drive Clean in the San Joaquin" program that helps pay for Smog Check tests and repairs: <https://ww2.valleyair.org/grants/drive-clean-in-the-san-joaquin/>.

⁴² EPA, EPA Legal Tools to Advance Environmental Justice, May 2022.

⁴³ Smog Check Contingency Measure SIP, Section 4.B ("Title VI and Environmental Justice").

⁴⁴ *Id.* at pages 18–20.

⁴⁵ CARB Resolution 23–20, October 26, 2023, page 5.

contingency measure under the CAA and the EPA's implementation regulations; and that the Smog Check Contingency Measure would achieve additional emissions reductions of NO_x and VOC, if triggered by certain EPA determinations, in Coachella Valley, Eastern Kern County, Mariposa County, Sacramento Metro, San Diego County, San Joaquin Valley, South Coast Air Basin, Ventura County, West Mojave Desert, and Western Nevada County.

We are not making any determination presently as to whether this individual contingency measure is sufficient by itself for CARB and the relevant air district to fully comply with the contingency measure requirements in any specific nonattainment area or specific NAAQS under CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014. We will be acting on the contingency measure SIP plan elements in the relevant nonattainment plan SIP submissions for the respective areas and NAAQS in separate rulemakings and will consider the emissions reductions associated with the Smog Check Contingency Measure at that time. This final action adds the Smog Check Contingency Measure and the related statutory provision to the federally enforceable California SIP.

V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of California Health & Safety Code section 44011(a)(4)(A) and (B), which authorizes CARB to narrow the newer model vehicle Smog Check inspection exemption. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁴⁶

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves a State measure as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), 13563 (76 FR 3821, January 21, 2011) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, this action does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Furthermore, Executive Order 12898, "Federal Actions To Address

Environmental Justice in Minority Populations and Low-Income Populations," (59 FR 7629, February 16, 1994), directs Federal agencies to identify and address

"disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." The EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

CARB evaluated environmental justice considerations as part of its SIP submission given that the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA reviewed and considered the air agency's evaluation of environmental justice considerations of this action, as is described in Section III ("Environmental Justice Considerations") of this document, as part of the EPA's review. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected areas. In addition, there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be

⁴⁶ 62 FR 27968 (May 22, 1997).

challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 25, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

- 2. Section 52.220 is amended by adding paragraph (c)(613) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(613) The following plan was submitted electronically on November 13, 2023 by the Governor's designee as an attachment to a letter of the same date.

(i) [Reserved]

(ii) *Additional Materials.*

(A) California Air Resources Board.

(1) “California Smog Check Contingency Measure State Implementation Plan Revision,” adopted on October 26, 2023.

(2) [Reserved]

(B) [Reserved]

* * * * *

■ 3. In Section 52.220a, amend paragraph (c), Table 1 by adding a heading for “Division 26 (Air Resources), Part 5 (Vehicular Air Pollution Control), Chapter 5 (Motor Vehicle Inspection Program), Article 2 (Program Requirements)” after the entry for “41962”; and under the new heading, adding an entry for “44011(a)(4)(A) and (B)” to read as follows:

§ 52.220a Identification of plan—in part.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS ¹

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Division 26 (Air Resources), Part 5 (Vehicular Air Pollution Control), Chapter 5 (Motor Vehicle Inspection Program), Article 2 (Program Requirements)				
44011(a)(4)(A) and (B)	Certificate of compliance or noncompliance; biennial requirement; exceptions; inspections; exemption from testing for collector motor vehicle.	10/10/2017	7/9/2024, [Insert Federal Register CITATION].	Submitted on November 13, 2023 as an attachment to a letter of the same date.
*	*	*	*	*

¹ Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in Table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed in paragraph (e).

* * * * *
[FR Doc. 2024–14355 Filed 7–8–24; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2022–0369; FRL–11761–02–R5]

Air Plan Approval; Wisconsin; Milwaukee Second 10-Year 2006 24-Hour PM_{2.5} Limited Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the limited maintenance plan (LMP) submitted by the Wisconsin Department of Natural Resources (WDNR) for the Milwaukee-

Racine maintenance area including Milwaukee, Waukesha, and Racine counties. The plan addresses the second 10-year maintenance period for particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM_{2.5}). EPA is approving Wisconsin's LMP submission for the Milwaukee-Racine maintenance area because it provides for the maintenance of the 2006 PM_{2.5} National Ambient Air Quality Standards (NAAQS) through the end of the second 10-year portion of the maintenance period. Additionally, EPA finds adequate and is approving the LMP as meeting the appropriate transportation conformity requirements. EPA proposed to approve this action on March 19, 2024, and received no comments.

DATES: This final rule is effective on August 8, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID

No. EPA–R05–OAR–2022–0369. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through <https://www.regulations.gov> or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Cecilia Magos, at (312) 886–7336 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Cecilia Magos, Air and Radiation Division (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7336, magos.cecilia@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA.

I. Background Information

On November 13, 2009 (74 FR 58688), EPA designated the Milwaukee-Racine area as a PM_{2.5} nonattainment area due to measured violations of the 2006 PM_{2.5} NAAQS. On June 8, 2012, and later supplemented on May 30, 2013, WDNR submitted to the EPA a request to redesignate the Milwaukee-Racine nonattainment area to attainment. The submission included a plan to provide for maintenance of the 2006 PM_{2.5} NAAQS in the area through 2024. EPA redesignated the Milwaukee-Racine area on April 22, 2014 (79 FR 22415), and approved the associated maintenance plan into the Wisconsin State Implementation Plan (SIP). The purpose of WDNR’s April 8, 2022, LMP submission is to fulfill the second 10-year planning requirement of Clean Air Act (CAA) section 175A(b) to ensure PM_{2.5} NAAQS compliance through 2034.

On March 19, 2024 (89 FR 19519), EPA proposed to approve the second 10-year PM_{2.5} LMP for the Milwaukee-Racine maintenance area addressing the 2006 PM_{2.5} maintenance area. EPA’s approval of the LMP will satisfy CAA section 175A requirements for the second 10-year period for the Milwaukee-Racine 2006 PM_{2.5} maintenance area through 2034. Further explanation of the CAA requirements, a detailed analysis of the revisions, and the EPA’s reasons for proposing approval were provided in the notice of proposed rulemaking (89 FR 19519) and will not be restated here. The public comment period for the proposed rule ended on April 18, 2024. EPA received no comments on the proposal and is finalizing our action as proposed.

II. Final Action

EPA is approving the second 10-year PM_{2.5} LMP for the Milwaukee-Racine 2006 PM_{2.5} maintenance area submitted by WDNR. EPA’s review of the air quality data for the maintenance area indicates that the State continues to show attainment well below the level of the 2006 PM_{2.5} NAAQS and that WDNR’s LMP meets all the LMP qualifying criteria set forth in the

“Guidance on Limited Maintenance Plan Option for Moderate PM_{2.5} Nonattainment Areas and PM_{2.5} Maintenance Areas”.¹ EPA’s approval of this LMP will satisfy the CAA section 175A requirements for the second 10-year period for the Milwaukee-Racine 2006 PM_{2.5} maintenance area. The Milwaukee-Racine PM_{2.5} maintenance area will no longer be required to perform regional emissions analyses as part of the conformity process but must meet project-level conformity analyses requirements as well as other transportation conformity criteria. See 40 CFR 93.109(e).

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

WDNR did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described in the section titled, “Environmental Justice Considerations” in the notice of proposed rulemaking. See 89 FR 19519. The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based that is inconsistent with the

¹ The guidance document developed by the Office of Air Quality Planning and Standards and the Office of Transportation and Air Quality, within the Office of Air and Radiation, titled “Guidance on the Limited Maintenance Plan Option for Moderate PM_{2.5} Nonattainment Areas and PM_{2.5} Maintenance Areas,” can be found at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1015UL4.pdf>.

stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not

be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 2, 2024.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, EPA amends title 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.2584 is amended by adding paragraph (g) to read as follows:

§ 52.2584 Control strategy; Particulate matter.

* * * * *

(g) Approval—On August 8, 2024, EPA approved the 2006 24-Hour PM_{2.5} limited maintenance plan for the second 10-year maintenance period for the Milwaukee-Racine area (Milwaukee, Racine and Waukesha counties) as submitted by the State of Wisconsin on April 8, 2022. The limited maintenance plan submission satisfies the second 10-year planning requirement of section 175A(b) of the Clean Air Act for the Milwaukee-Racine area.

[FR Doc. 2024–14932 Filed 7–8–24; 8:45 am]

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Proposed Rules

Federal Register

Vol. 89, No. 131

Tuesday, July 9, 2024

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[Doc. No. AMS–SC–24–0020]

Watermelon Research and Promotion Plan; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking would implement a recommendation from the National Watermelon Promotion Board to increase the assessment rate from six cents per hundredweight to nine cents per hundredweight. Domestic watermelon producers of 10 acres or more and domestic first handlers of watermelons would each pay four and a half cents per hundredweight, and importers of 150,000 pounds or more annually of watermelons would pay nine cents per hundredweight. This proposed rulemaking would also amend current regulatory language to correct non-substantive and typographical errors.

DATES: Comments must be received by August 8, 2024.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rulemaking. Comments may be mailed to the Docket Clerk, Market Development Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 1406–S, STOP 0244, Washington, DC 20250–0237; submitted by Email: SM.USDA.MRP.AMS.MDDComment@usda.gov; or via internet at <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register**. Comments submitted in response to this proposed rulemaking will be included in the record and will be made available to the public and can be viewed at: [https://](https://www.regulations.gov)

www.regulations.gov. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT:

William Hodges, Marketing Specialist, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, STOP 0244, Washington, DC 20250–0244; Telephone: (443) 571–8456; or Email: William.Hodges2@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rulemaking affecting the Watermelon Research and Promotion Plan (7 CFR part 1210) (Plan) is authorized by the Watermelon Research and Promotion Act (7 U.S.C. 4901–4916) (Act).

Executive Orders 12866, 13563 and 14094

The Agricultural Marketing Service (AMS) is issuing this proposed rulemaking in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This proposed rulemaking is not a significant regulatory action within the meaning of Executive Order 12866. Accordingly, this action has not been reviewed by the Office of Management and Budget under sec. 6 of the Executive order.

Executive Order 13175

This proposed action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have

Tribal implications. AMS has determined that this proposed rulemaking is unlikely to have substantial direct effects on one or more Indian Tribes, or the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under sec. 1650 of the Act (7 U.S.C. 4909), a person may file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Plan, any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with the law. In any petition, the person may request a modification of the Plan or an exemption from the Plan. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Background

Under the Plan, the National Watermelon Promotion Board (Board) administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the position of watermelons in the marketplace, and to establish, maintain, and expand markets for watermelons. To administer the program, §§ 1210.328 and 1210.341 of the Plan authorize the Board, with the approval of AMS, to formulate an annual budget of expenses and collect assessments on domestic producers growing 10 acres or more of watermelons, domestic first handlers of watermelons, and importers of 150,000 or more pounds of watermelons per year. The Board is familiar with both the

program's needs and the rising costs of research and promotion initiatives and are able to formulate an appropriate budget and assessment rate.

Currently, in accordance with the Plan, domestic watermelon producers of 10 acres or more and domestic first handlers of watermelons each pay three cents per hundredweight, and importers of 150,000 pounds or more annually of watermelons pay six cents per hundredweight. The Plan specifies that handlers are responsible for collecting and submitting both the producer and handler assessments to the Board, reporting their handling of watermelons, and maintaining records necessary to verify their reporting(s). Importers are responsible for payment of assessments to the Board on watermelons imported into the United States through the U.S. Customs Service and Border Protection. The current assessment rate for watermelon producers, handlers, and importers was established in 2008.

The Board recommended increasing the current assessment rate to address inflation's impact on buying power while maintaining its competitiveness in the marketplace.

Board Recommendation To Adjust the Assessment Rate

This proposed rulemaking would amend § 1210.515 of the Plan by increasing the assessment rate from six cents per hundredweight to nine cents per hundredweight. The assessment on domestic watermelon producers of 10 acres or more and domestic first handlers of watermelons would increase from three cents per hundredweight to four and a half cents per hundredweight, and the assessment on importers of 150,000 pounds or more annually of watermelons would increase from six cents per hundredweight to nine cents per hundredweight.

The Board discussed this recommendation over several months at various State and regional watermelon association meetings in addition to presenting at a public town hall meeting on February 23, 2024, at the National Watermelon Association's (NWA) annual convention. The Board sent out postcards to all industry contacts in their database to invite them to the NWA town hall meeting and provide information on the proposed assessment increase. The Board met on February 24, 2024, and voted unanimously to propose the assessment increase from six cents to nine cents per hundredweight of watermelons. Board members present for the vote represented domestic producers and first handlers, as well as importers.

From 2008 to 2023, according to the Board, the United States experienced inflation of 43.7%, which equates to 2.3% when compounded annually. This dollar devaluation translates to a loss in buying power of roughly 30% since the previous assessment increase was instituted in 2008. The erosion of buying power and continued inflationary pressure on funds limit the Board's research and promotion activities. The proposed change would further support the Board's goal of a balanced budget beginning in 2025, while still allowing for increased research and promotion of watermelon across the Board's communication, marketing, foodservice, and research committees.

Section 1210.341 of the Plan states, in part, that in the case of an importer, the assessment shall be equal to the combined rate for domestic producers and handlers and shall be paid by the importer at the time of entry of the watermelons into the United States. Accordingly, with the proposed increased assessment rate of nine cents per hundredweight, domestic watermelon producers of 10 acres or more and domestic first handlers of watermelons would each pay four and a half cents per hundredweight, and importers of 150,000 pounds or more annually of watermelons would pay nine cents per hundredweight. This proposed increase is consistent with sec. 1647(f) of the Act that permits changes in the assessment rate through notice and comment procedures. Section 1210.341(b) of the Plan states that assessment rates shall be fixed by the Secretary in accordance with sec. 1647(f) of the Act. Further, not more than one assessment on a producer, handler, or importer may be collected on any lot of watermelons. Accordingly, if this proposed rulemaking was finalized, § 1210.515(a) of the Plan would be revised to reflect the recommendation of the Board as it relates to assessments.

Amend Current Regulatory Language

This proposed rulemaking also includes proposed changes to § 1210.515(b) of the Plan to amend language and make non-substantive corrections to the text. These proposed edits are administrative changes and would not have an impact on the assessment rate. The proposed edits would: amend the misspelling of "scheudle" to "schedule"; amend "U.S. Customs Service (USCS)" to "U.S. Customs Service and Border Protection (Customs)"; amend "USCS" to "Customs" and amend "of any other" to "or any other". The proposal would also

add clarifying language and amend "may submit the Board" to "may submit to the Board".

Initial Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], AMS has considered the economic impact of this action on the small producers, handlers, and importers that would be affected by this proposed rulemaking. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened.

Domestic producers of less than 10 acres of watermelons are exempt from this program. Importers of less than 150,000 pounds of watermelons per year are also exempt. According to the Board, there are approximately 429 producers, 121 first handlers, and 183 importers who are subject to the provisions of the Plan.

The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers of watermelons as those having annual receipts equal to or less than \$3.75 million [NAICS code 111219—Other Vegetable (except Potato) and Melon Farming] and small agricultural service firms (handlers and importers) as those having annual receipts equal to or less than \$34.0 million [NAICS code —111514—Postharvest Crop Activities (except Cotton Ginning)]. Under these definitions, the majority of the producers, handlers, and importers that would be affected by this proposed rulemaking would be considered small entities. This conclusion is based on following computations and data, using the current Board assessment rate of six cents per hundredweight.

For 2023, National Agricultural Statistics Service (NASS) reported a season average producer price per pound of \$0.214. The Board estimated the Freight on Board (FOB) price to be \$0.284 for both importers and handlers in 2023. The Board reported that 2023 assessments received from domestic entities totaled \$2.247 million, with equal proportions of \$1.1235 million coming from producers and handlers. Dividing \$1.1235 million by half of the current assessment rate of \$0.06 per hundredweight, as producers and handlers evenly split the assessment, yields an estimate of total producer pounds assessed of 3,745.0 million (\$1.1235 million divided by \$0.0003 per pound). Dividing the total pounds assessed quantity by 429 producers yields an average assessed pounds per producer estimate of 8.73 million.

Multiplying the annual assessed pounds per producer estimate of 8.73 million pounds by the 2023 NASS season average producer price per pound of \$0.214 yields an average annual watermelon sales receipts per producer estimate of \$1.87 million. This is well below the SBA small producer size threshold of \$3.75 million.

With an equal proportion of annual domestic assessments coming from handlers, the total handler pounds assessed is also 3,745.0 million. Dividing total handler pounds assessed by 121 handlers yields an average assessed pounds per handler estimate of 30.95 million pounds. Multiplying this estimate of annual assessed pounds per handler of 30.95 million pounds by the season average handler price per pound of \$0.284, provided by the Board, yields an estimate of average annual watermelon sales receipts per handler of \$8.79 million. This is well below the SBA small handler size threshold of \$34.0 million.

The Board reported that assessments received from importers totaled \$1.196 million in 2023. Dividing \$1.196 million by the current assessment rate of \$0.06 per hundredweight (\$0.0006 per pound) yields an estimate of total importer pounds assessed of 1,993.3 million. Dividing the total pounds assessed by the number of importers, 183, yields an average assessed pounds per importer estimate of 10.89 million. Multiplying this estimate of annual assessed pounds per importer of 10.89 million pound by the season average importer price per pound of \$0.284 yields an estimate of average annual watermelon sales receipts per importer of \$3.09 million. This is well below the SBA small importer size threshold of \$34.0 million. Assuming normal distributions, the majority of producers, handlers, and importers would be classified as small businesses according to SBA size standards.

Under the current Plan, domestic watermelon producers of 10 acres or more and domestic first handlers of watermelon each pay a mandatory assessment rate of three cents per hundredweight, and importers of more than 150,000 pounds or more annually of watermelons pay an assessment of six cents per hundredweight. Assessments under the program are used by the Board to finance promotion, research, and educational programs designed to increase consumer demand for watermelons in the United States and international markets. The six cents per hundredweight assessment rate on watermelons became effective when the Plan was amended in January 2008, which was the only time that the Board

increased the assessment rate since the inception of the program in 1989. The Plan is administered by the Board under the U.S. Department of Agriculture (USDA) supervision.

According to the Board, additional revenue is required to sustain and expand the promotional, research, and communications programs. The Board approved the proposed assessment rate increase at its February 24, 2024, meeting. This proposed increase is consistent with sec. 1647(f) of the Act that permits changes in the assessment rate through notice and comment procedures. Section 1210.341(b) of the Plan states that assessment rates shall be fixed by the Secretary in accordance with sec. 1647(f) of the Act. Section 1210.515(a) of the Plan currently states that an assessment of three cents per hundredweight shall be levied on all watermelons produced, and on all watermelons first handled for consumption as human food. It also states that an assessment of six cents per hundredweight shall be levied on watermelons imported into the United States for consumption as human food. Further, not more than one assessment on a producer, handler, or importer may be collected on any lot of watermelons. Under this proposal, § 1210.515(a) of the Plan would be revised to increase the assessment rate from six cents to nine cents per hundredweight. The proposal would increase the assessment rate of three cents per hundredweight to four and a half cents per hundredweight to be levied on all watermelons produced, and on all watermelons first handled for consumption as human food in the United States and increase the assessment rate from six cents to nine cents per hundredweight to be levied on all watermelons imported into the United States for ultimate consumption as human food.

The Board contracted with an independent industry analyst to conduct an inflation impact analysis using the Consumer Price Index (CPI) published by the U.S. Bureau of Labor Statistics. The base year for the analysis was 2008, the year of the last assessment rate increase, and the analysis extended through April 2023. The CPI was 211.080 in January 2008 and 303.363 in April 2023. Dividing 303.363 by 211.080 yields a ratio of 1.437, or an increase of 43.7 percent. This inflation rate equates to 2.3% when compounded annually. Dividing the Board's average annual revenue throughout this period of \$3,024,721 by the CPI change ratio of 1.437 yields a figure of \$2,104,601. This decline of \$920,120 shows the budget's reduced buying power of roughly 30 percent since the previous assessment

increase. This reduction in buying power due to inflation has had a significant impact on the industry's ability to compete for market share. The cost of media services, research programs, promotional opportunities, as well as general administrative costs and fees paid to USDA have continually risen. USDA's AMS oversight costs were budgeted at \$105,000 in 2008, compared to \$147,000 for 2023. It is AMS policy that all research and promotion programs be charged in a fair and equitable manner. Assessments collected have not kept pace with these increasing costs. Movement and sales of watermelon continue to grow, however, that growth has not outpaced the negative effects of inflation.

Armada Corporate Intelligence conducted a five-year return on investment (ROI) study for the Board from 2017–2021, to determine the impact of Board activities on the demand for watermelons. The resultant ROI for the Board's promotional endeavors is approximately 19:1, which displays that the activities of the Board have a significant positive impact on the watermelon industry. For further details, the study is located at <https://www.watermelon.org/press-releases/watermelon-board-announces-significant-positive-impact-for-watermelon-industry-with-19-roi/>. Armada Corporate Intelligence's 2021 econometric analysis is aligned with prior economic studies developed for the Board, including Dr. Harry Kaiser of Cornell University's 2017 analysis.¹

With the proposed increase assessment, the financial commitment of the US watermelon industry for research and promotion activity would increase approximately 50% in current dollars. For example, if we apply the proposed assessment increase to 2023, in which collections totaled \$3,442,105, the increase in assessments collected would have been approximately \$1,721,053. The Board plans to use the additional funds to expand promotion and research activities, maintain operating reserves, and to address inflation's impact on buying power.

The Board estimates the proposed nine cents per hundredweight adjustment to the assessment rate would increase the cost to watermelon producers and handlers from \$12 per truckload of watermelons to \$18 per truckload of watermelons each. Similarly, the adjusted assessment rate will increase the cost to watermelon importers from \$24 a truckload to \$36 a truckload. This is based on a 40,000-

¹ <https://www.watermelon.org/wp-content/uploads/2020/01/Econometric-Evaluation.pdf>.

pound net weight of watermelons per truckload.

Prior to its recommendation to increase the assessment rate, the Board considered three alternative options. First, the Board considered maintaining the current assessment rate of six cents per hundredweight. However, with no increase to the assessment rate, the Board determined many research and promotion programs would be reduced or eliminated to balance the budget. Consequently, the alternative of maintaining the current assessment rate was rejected.

The second alternative considered by the Board was a two-cent increase to the assessment rate, raising the assessment rate from six cents per hundredweight to eight cents per hundredweight. This would allow the Board to operate with a balanced budget beginning in 2025, in addition to increasing investment in Board promotions. However, the Board decided against supporting a two-cent increase as inflationary pressure may further limit operations of the Board in coming years.

The third alternative considered by the Board was a tiered increase of the assessment rate with a two-cent increase effective on January 1, 2025, for a rate of eight cents per hundredweight, and an additional one-cent increase effective on January 1, 2026, for a rate of nine cents per hundredweight. This option to spread the assessment increase over a prolonged period was considered, but the Board ultimately decided against this alternative to avoid confusion with concurrent annual assessment adjustments.

This proposed rulemaking would also include administrative changes to § 1210.515(b) of the Plan to correct non-substantive and typographical errors. These administrative changes would have no impact on the assessment rate.

This proposed rulemaking would not impose additional recordkeeping requirements on first handlers, producers, or importers of watermelons. Producers of fewer than 10 acres of watermelon and importers of less than 150,000 pounds of watermelon annually are exempt. There are no Federal rules that duplicate, overlap, or conflict with this proposed rulemaking. In accordance with the Office of Management and Budget (OMB) regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. chapter 35], the information collection and recordkeeping requirements that are imposed by the Plan have been approved previously under OMB control number 0581-0093. This proposed rulemaking would not result

in a change to the information collection and recordkeeping requirements previously approved.

AMS performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed amendment to the Plan on small entities, and we invite comments concerning potential effects of this amendment on small businesses.

AMS has determined this proposed rulemaking is consistent with the Act and would effectuate its purposes.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rulemaking by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Agricultural research, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelons.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 1210 as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

- 1. The authority citation for part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916 and 7 U.S.C. 7401.

- 2. Amend § 1210.515 by revising paragraphs (a) and (b) to read as follows:

§ 1210.515 Levy of assessments.

(a) An assessment of four and a half cents per hundredweight shall be levied on all watermelons produced for ultimate consumption as human food, and an assessment of four and a half cents per hundredweight shall be levied on all watermelons first handled for ultimate consumption as human food. An assessment of nine cents per hundredweight shall be levied on all watermelons imported into the United States for ultimate consumption as human food at the time of entry in the United States.

(b) The import assessment shall be uniformly applied to imported watermelons that are identified by the numbers 0807.11.30 and 0807.11.40 in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh watermelons for consumption as human food. The U.S. Customs Service and Border Protection (Customs) will collect assessments on such watermelons at the time of entry and will forward such assessment as per

the agreement between Customs and USDA. Any importer or agent who is exempt from payment of assessments may submit to the Board adequate proof of the volume handled by such importer for the exemption to be granted.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–14937 Filed 7–8–24; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0228; FRL–11830–01–R9]

Federal Implementation Plan for Nonattainment New Source Review Program; Mojave Desert Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to promulgate a Federal Implementation Plan (FIP) under the Clean Air Act (CAA) that consists of Nonattainment New Source Review (NNSR) rules for areas within the jurisdiction of the Mojave Desert Air Quality Management District (MDAQMD or “District”) in which air pollutant concentrations are above specific National Ambient Air Quality Standards (NAAQS). The NNSR rules would apply to construction of new major stationary sources and major modifications at existing major stationary sources of air pollution. The proposed FIP, if finalized, would be implemented by the EPA, unless and until it is replaced by an EPA-approved state implementation plan (SIP).

DATES: Comments must be received on or before August 23, 2024. The EPA will hold a virtual public hearing on July 24, 2024.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R09–OAR–2024–0228 via the Federal eRulemaking Portal at <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending

comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

You may register for the hearing at <https://www.epa.gov/caa-permitting/public-hearing-federal-implementation-plan-nonattainment-new-source-review-program-0>. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

FOR FURTHER INFORMATION CONTACT: Tanya Abrahamian, Air and Radiation Division, Rules Office (AIR-3-2), Environmental Protection Agency, Region IX, telephone number: (213) 244-1849; email address: Abrahamian.Tanya@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA-R09-OAR-2024-0228 at <https://www.regulations.gov> (our preferred method). Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

B. Participation in Virtual Public Hearing

The EPA will begin pre-registering speakers for the hearing no later than 1 business day after publication of this document in the **Federal Register**. To register to speak at the virtual hearing, please visit <https://www.epa.gov/caa-permitting/public-hearing-federal-implementation-plan-nonattainment-new-source-review-program-0> for online

registration. The last day to pre-register to speak at the hearing will be July 22, 2024. The EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: <https://www.epa.gov/caa-permitting/public-hearing-federal-implementation-plan-nonattainment-new-source-review-program-0>.

The virtual public hearing will be held via teleconference on July 24, 2024. The virtual public hearing will convene at 4 p.m. Pacific Time (PT) and will conclude at 7 p.m. PT. The EPA may close the session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. For information or questions about the public hearing, please contact Tanya Abrahamian, per the **FOR FURTHER INFORMATION CONTACT** section of this document. The EPA will announce further details at <https://www.epa.gov/caa-permitting/public-hearing-federal-implementation-plan-nonattainment-new-source-review-program-0>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule. Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to Abrahamian.Tanya@epa.gov. The EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations, but the EPA will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/caa-permitting/public-hearing-federal-implementation-plan-nonattainment-new-source-review-program-0>. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact Abrahamian.Tanya@epa.gov, per the **FOR FURTHER INFORMATION CONTACT** section of this document, to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodations such as audio description, please pre-

register for the hearing and describe your needs by July 22, 2024. The EPA may not be able to arrange accommodations without advance notice.

Policy on Children’s Health

In 2021, EPA updated its *Policy on Children’s Health* to reflect that “children’s environmental health refers to the effect of environmental exposure during early life: from conception, infancy, early childhood and through adolescence until 21 years of age.” In addition, the policy applies to “effects of early life exposures [that] may also arise in adulthood or in later generations.” In this action, the EPA is proposing to implement our Federal regulations in the nonattainment areas under the MDAQMD. In so far as there is an impact from this action, it will be positive since the deficiencies in the District’s program it is meant to rectify would likely result in increased emissions as compared to this FIP and our Federal NNSR regulations.

The information presented in this preamble is organized as follows:

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I. Purpose of This Action

The EPA is proposing an NNSR FIP that will apply to construction of new major sources and major modifications at existing major sources that are located within areas that are designated as not in attainment with specific NAAQS. These are the San Bernardino County portion of the West Mojave Desert ozone nonattainment area and the San Bernardino County and Trona Planning Area PM₁₀ nonattainment areas.¹

¹ See 40 CFR 81.305. The PM₁₀ nonattainment areas together consist of all of the MDAQMD portion of San Bernardino County; they are the Trona Planning Area and the portion of San

II. Background

The following sections describe the basis for the EPA's determination that an NNSR FIP is necessary for the portion of the West Mojave Desert ozone nonattainment area and the San Bernardino County and Trona Planning Area PM₁₀ nonattainment areas that are located within the jurisdiction of the MDAQMD. The MDAQMD is currently the agency responsible for issuing permits required under the CAA to construct new and modified major stationary sources of air pollution in San Bernardino County and the Palo Verde Valley portion of Riverside County.²

A. Standards, Designations, and Classifications

The CAA requires the EPA to set NAAQS for "criteria pollutants." States are then responsible for developing state implementation plans (SIPs) that contain regulatory measures to prevent air pollution from exceeding those standards, or to bring areas that do not meet those standards into attainment.

Currently, ozone and related photochemical oxidants and particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, or "PM₁₀," as well as five other major pollutants, are listed as criteria pollutants.³ On July 1, 1987, the EPA promulgated two primary standards for PM₁₀.⁴ Effective December 18, 2006, the EPA revoked the annual PM₁₀ NAAQS but retained the 24-hour PM₁₀ NAAQS.⁵ On March 27, 2008, the EPA revised the NAAQS for ozone to strengthen the 8-hour primary and secondary standards ("2008 ozone NAAQS").⁶ On March 6, 2015, the EPA issued an implementation rule for the 2008 ozone NAAQS ("2008 Ozone SIP Requirements Rule").⁷ That action amended state planning requirements applicable to ozone nonattainment areas and provided specific deadlines for additional SIP submittals.

As part of their SIPs, states designated as nonattainment for a NAAQS criteria pollutant are required to develop and submit to the EPA for approval NNSR preconstruction permit programs that meet the requirements in CAA sections

172, 173, and 182, as applicable. These permits limit increased emissions from construction of new and modified major stationary sources locating in, or located in, areas designated nonattainment for the NAAQS. The statutory and regulatory NNSR requirements for the 2008 ozone NAAQS are found in CAA sections 172(c)(5), 173, 182, and 40 CFR 51.160 through 51.165. The 2008 Ozone NAAQS SIP Requirements Rule required states to submit an NNSR plan or plan revision no later than three years from the effective date of the nonattainment designation for the 2008 ozone NAAQS, or by July 20, 2015.⁸ The EPA later revised the ozone NAAQS in 2015 ("2015 ozone NAAQS"), and thereafter⁹ promulgated a similar requirement for NNSR preconstruction permitting for the 2015 ozone NAAQS.¹⁰

Within the MDAQMD, the "Los Angeles-San Bernardino Counties (West Mojave Desert), CA" area ("West Mojave Desert") is currently designated to be in Severe nonattainment for the 2008 and 2015 ozone NAAQS.¹¹ The Trona Planning Area and the remainder of San Bernardino County that is within the MDAQMD's jurisdiction are each designated as Moderate nonattainment areas for the 1987 PM₁₀ NAAQS.¹² The MDAQMD's jurisdiction is designated Attainment/Unclassifiable for all other criteria pollutants.¹³ Therefore, the designation of portions of the MDAQMD as Federal ozone and PM₁₀ nonattainment areas triggered the requirement for the District to develop and submit an NNSR program to the EPA for approval into the California SIP.

B. Findings and Disapprovals

On February 3, 2017, the EPA found that the State of California had failed to submit a SIP revision for NNSR rules that apply to a Severe classification for the 2008 ozone NAAQS, as required under subpart 2 of part D of title 1 of the CAA and the 2008 Ozone SIP Requirements Rule.¹⁴ Consistent with the CAA and the EPA regulations, the EPA's finding of failure to submit in February 2017 established deadlines for the imposition of sanctions for the affected ozone nonattainment area. The EPA's finding of failure to submit also triggered an obligation under CAA section 110(c) for the EPA to promulgate a Federal Implementation Plan (FIP) no

later than two years from the finding of failure to submit a complete SIP (*i.e.*, by March 6, 2019).¹⁵ Specifically, the finding stated that if the state did not make the required SIP submission and the EPA did not take final action to approve the submission within two years of the effective date of these findings, the EPA would be required to promulgate a FIP for the affected nonattainment area.¹⁶

The 2015 Ozone NAAQS Implementation Rule required the MDAQMD to submit an updated NNSR rule to the EPA by August 1, 2021, no later than three years from the effective date of its nonattainment designation.¹⁷ On July 23, 2021, the California Air Resources Board submitted to the EPA the MDAQMD's revised NNSR rules for the 2015 ozone NAAQS, which the MDAQMD adopted in March 2021.¹⁸ On June 30, 2023, the EPA finalized a limited approval and limited disapproval ("LA/LD action") of the District's NNSR rules.¹⁹ The EPA evaluated the SIP submission to determine its compliance with NNSR requirements for the 2008 and 2015 ozone NAAQS and the 1987 PM₁₀ NAAQS due to the MDAQMD's nonattainment status for those three NAAQS. The EPA's rulemaking for the submitted rules explained that the EPA had determined that the submitted rules contained six deficiencies that did not fully satisfy the relevant requirements for preconstruction review and permitting in nonattainment areas under section 110 and part D of title I of the Act, which therefore prevented full approval.²⁰ As noted in that final action, this disapproval imposed an obligation for the EPA to promulgate a FIP pursuant to CAA section 110(c) within 24 months of the effective date of the action (*i.e.*, July 31, 2023, which would make the EPA's deadline to promulgate a FIP no later than July 31, 2025) unless the EPA approved a subsequent SIP revision that corrects the deficiencies. The 2023 final action also noted that the EPA had an existing obligation to promulgate a FIP for any new source review (NSR) SIP elements that the Agency had not taken final action to approve.²¹ The EPA is proposing this FIP for the NNSR program in the MDAQMD to fulfill the EPA's statutory duty by the deadline established under

Bernardino County that excludes both the Trona Planning Area and the portion of San Bernardino County that is located in the South Coast Air Basin. A map of this area is available in the docket for this action.

² California Health and Safety Code section 41210(b).

³ See 40 CFR part 50.

⁴ 52 FR 24634 (July 1, 1987).

⁵ 71 FR 61144 (October 17, 2006).

⁶ 73 FR 16436 (March 27, 2008).

⁷ 80 FR 12264 (March 6, 2015).

⁸ 80 FR 12264 (March 6, 2015); 40 CFR 51.1114.

⁹ 80 FR 65292 (October 26, 2015).

¹⁰ 40 CFR 51.1314; 83 FR 62998 (December 6, 2018).

¹¹ 40 CFR 81.305.

¹² *Id.*

¹³ *Id.*

¹⁴ 82 FR 9158 (February 3, 2017).

¹⁵ *Id.* at 9161. The effective date was March 6, 2019, because the 30-day period fell on a Sunday.

¹⁶ *Id.*

¹⁷ 83 FR 62998.

¹⁸ 88 FR 42258 (June 30, 2023).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 42268.

a consent decree in a lawsuit brought against the EPA to compel promulgation of a FIP arising from the finding of failure to submit.²²

Accordingly, the EPA is proposing this FIP to address the deficiencies identified in the LA/LD action of MDAQMD Rules 1301, 1302, 1303, 1304, and 1305.²³ These rules contain essential components of the MDAQMD's amended NNSR program. Although the EPA is aware that the MDAQMD intends to submit revisions to its NNSR program that would address all but one of the deficiencies in the 2023 LA/LD action,²⁴ the EPA has not approved into the SIP any corrections that resolve the deficiencies identified in that rulemaking. Therefore, the EPA is proposing the FIP in this action to address the deficiencies identified in the June 30, 2023, LA/LD action.²⁵

In that rulemaking, the EPA determined that the MDAQMD program did not satisfy the requirement that permit applicants obtain corresponding reductions in emissions to offset increased emissions from construction at stationary sources. The EPA observed that the calculation procedure used in the District's rules to determine the amount of offsets required in certain situations does not comply with CAA section 173(c)(1) nor the regulations at 40 CFR 51.165(a)(3)(ii)(J) and (a)(1)(vi)(E).²⁶ Under CAA section 173(c)(1), the SIP must contain provisions to ensure that "the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction . . . in the actual emissions of such air pollutant. . . ." ²⁷ The EPA found the MDAQMD's Rule 1304 to be deficient because it allows offsets for each modification at a major source to be calculated as the difference between the pre- and post-modification allowable emissions (also referred to as "potential to emit" or PTE) of a pollutant as opposed to requiring offsets for these modifications based on the difference between pre-modification actual emissions and post-modification

allowable emissions.²⁸ In other words, the MDAQMD's Rule 1304 applies an allowables-to-allowables test (also referred to as a PTE-to-PTE test) for calculating the quantity of "simultaneous emission reductions" (SERs)²⁹ for offsetting emissions increases from a "Modified Major Facility."³⁰ Because SERs calculated using the post-modification PTE to pre-modification PTE test at a Modified Major Facility are calculated using the pre-modification PTE instead of the pre-modification Historic Actual Emissions (HAE) as the baseline, the EPA determined that the District's approach for calculating offsets does not meet minimum SIP requirements.³¹ Using actual emissions as the pre-project baseline (as required by the EPA's regulations) would show a higher net emissions increase than a calculation that uses allowable (*i.e.*, potential) emissions as the pre-project baseline.³² Consequently, calculating emissions decreases using potential emissions as the baseline allows reductions "on paper" that do not represent real emissions reductions. The EPA determined that this deficiency in the calculation procedures of Rule 1304 also results in deficiencies in Rules 1301, 1302, 1303, and 1305 because those rules contain cross-references to Rule 1304.³³

The EPA also determined that the definitions for "Major Modification" and "Modification (Modified)" in Rule 1301(NN) and 1301(JJ), respectively, are deficient because they allow permit applicants to calculate a net emissions increase using allowable (*i.e.*, potential) emissions as the pre-project baseline, rather than actual emissions, as required by the EPA's NNSR regulations.³⁴ More

specifically, Rule 1304(B)(2) allows SERs calculated and verified pursuant to the PTE-to-PTE test under Rule 1304(C)(2) to be subtracted from the total of all "net emissions increases" at any given facility. Due to the same deficiency identified in Rule 1304, the EPA determined that the MDAQMD's approach does not meet minimum SIP requirements because determining the amount of a net emissions increase (by calculating the difference between pre-project and post-project emissions) using actual emissions as the pre-project baseline (as required by the EPA's regulations) will show a higher net emissions increase than a calculation that uses allowable (*i.e.*, potential) emissions as the pre-project baseline.³⁵ The MDAQMD definitions of "major modification" and "modification (modified)" in Rules 1301(NN) and 1301(JJ), respectively, are therefore not in compliance with the Federal regulations in 40 CFR 51.165(a)(1)(v)(A)(1); the calculation procedures for determining offsets pursuant to 40 CFR 51.165(a)(3)(ii)(J); and the criteria for determining the emission decreases that are creditable as offsets pursuant to 40 CFR 51.165(a)(1)(vi)(E)(1).

Next, the District rules do not include a requirement in CAA section 182(c)(6) that applies to nonattainment areas classified as Serious and above. The CAA provides that increases of ozone precursor emissions (volatile organic compound (VOC) and oxides of nitrogen (NO_x))³⁶ resulting from a modification "shall not be considered de minimis for the purposes of determining (NNSR) applicability unless the increases in net emissions . . . from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of five consecutive calendar years which includes the calendar year in which such increase occurred."³⁷ The EPA found the MDAQMD provisions to be deficient because they did not include this provision.³⁸

In addition to the deficiencies described above, the EPA identified deficiencies stemming from the MDAQMD's use of incorrect or undefined words. First, MDAQMD Rule 1304(D)(2)(a)(i) uses the word "proceeds" where the word "precedes" should be used, changing the meaning

²² *Center for Biological Diversity et al., v. Regan*, No. 3:22-cv-03309-RS (N.D. Cal.). This consent decree is also available in the docket of this action.

²³ 88 FR 42258.

²⁴ *Id.*

²⁵ The EPA's review of any SIP submission submitted by the MDAQMD to address the deficiencies identified in the June 2023 final action will proceed as with any other SIP submission review.

²⁶ 88 FR 42258, 42261–6.

²⁷ Offsets represent real reductions in real pollutants. A source that is permitted to emit 100 tpy but actually emits 90 tpy must reduce its actual emissions to below 90 tpy for offset credit.

²⁸ 40 CFR 51.165(a)(3)(ii)(J).

²⁹ "SER" is the MDAQMD's term for offsets.

³⁰ 88 FR 42261–6. The MDAQMD's rules equate "allowable emissions" and PTE.

³¹ *Id.* The MDAQMD Regulation XIII, Rule 1301(HH) defines Historic Actual Emissions (HAE) as "the Actual Emissions of an existing Emissions Unit or combination of Emissions Units, including Fugitive Emissions directly related to the Emissions Unit(s), if the Facility belongs to one of the Facility categories as listed in 40 CFR 51.165(a)(1)(iv)(C), calculated in pounds per year and determined pursuant to the provisions of District Rule 1304(D)(2)."

³² As the EPA wrote in the June 2023 limited approval and limited disapproval action, "Allowable emissions are generally set higher than anticipated actual emissions to allow for normal fluctuations in emissions to occur without violating the permit conditions. The use of allowable emissions as the pre-project baseline means that the difference between pre-project and post-project emissions will be smaller than a calculation applying the EPA's requirement to use actual emissions as the pre-project baseline."

³³ *Id.* at 42263.

³⁴ *Id.* at 42264–65.

³⁵ *Id.* at 42265.

³⁶ While CAA section 182(c)(6) refers only to VOC emissions, CAA section 182(f) extends to NO_x emissions all requirements related to VOC emissions unless the Administrator determines that there is a disbenefit to NO_x reductions.

³⁷ CAA section 182(c)(6).

³⁸ 88 FR 42266–67.

of the provision.³⁹ Second, the MDAQMD's rules allow the word "contract," an undefined term, to act as a substitute for the word "permit."⁴⁰ The EPA found that where it is not clear that permit requirements must be met to obtain such a contract, regulated sources may not need to adhere to SIP requirements they would otherwise have to meet to obtain a permit.

Finally, MDAQMD Rule 1305 allows for interprecursor trading of ozone precursors, whereas the EPA's rules no longer allow interprecursor trading.⁴¹ Except for the deficiencies regarding the missing applicability threshold provision and ozone interprecursor trading, which only apply to the emission of ozone precursors, the deficiencies identified in this section are relevant for both ozone and PM₁₀ nonattainment in the MDAQMD-administered portion of San Bernardino County.

C. Scope of the EPA's Proposed FIP

The FIP proposed in this action would authorize the EPA to directly implement the NNSR program for construction of new major stationary sources and major modifications at existing stationary sources within (1) the San Bernardino County portion of the West Mojave Desert ozone nonattainment area for the 2008 and 2015 ozone NAAQS and (2) the portions of the San Bernardino County and Trona Planning Area PM₁₀ nonattainment areas, all of which are within the MDAQMD's jurisdiction. The EPA would directly implement the NNSR program in these areas until such time as the EPA approves a SIP submission from the MDAQMD that fully resolves the deficiencies identified in the EPA's June 30, 2023, LA/LD action on the MDAQMD's NNSR program and identifies no new deficiencies.⁴²

The proposed FIP requirements are designed to meet the statutory requirements for SIPs and NNSR programs in CAA sections 110(c)(1), 172(c)(5), 173, 182(c) and (d), 189(a)(1)(A) and (e), 301(a), and 302. The provisions of the FIP are also designed to meet the requirements for

state plans in the EPA regulations at 40 CFR 51.165, 51.1114, and 51.1314.

The FIP addresses the deficiencies the EPA identified in the MDAQMD's NNSR program by incorporating requirements from 40 CFR part 51, appendix S ("appendix S"), which was developed by the EPA as a transitional program for areas lacking an EPA-approved NNSR program. The deficiencies in the MDAQMD's NNSR program that the EPA identified in the 2023 LA/LD action are broad and affect multiple aspects of the program.⁴³ For example, the MDAQMD's definition of what constitutes a modification could enable sources that should be subject to NNSR to avoid it, and the undefined term "contract" is potentially unenforceable. These deficiencies create issues at the outset as to whether a source is subject to NNSR. Because of these and the other deficiencies in the MDAQMD's NNSR program (e.g., the offset calculation deficiencies), the EPA determined that it is most appropriate to propose a FIP that implements all of appendix S until the MDAQMD submits a fully approvable SIP.

The EPA has not, however, applied appendix S as a standalone FIP, so additional requirements are needed for this FIP rule. While appendix S and 40 CFR 51.165 have elements of a FIP that can be readily incorporated into rules applicable to specific jurisdictions, they do not include the application submission requirements and other requirements necessary to make the program administrable. Absent such specific administration requirements in the EPA's Federal NSR regulation, the EPA has looked to other resources to develop the content for this FIP, including the EPA regulations at 40 CFR part 49, which contain a Federal NNSR program for Indian Country.

The NNSR program only applies to pollutants for which an area is designated nonattainment; therefore, this proposed action would apply only in the areas within MDAQMD's jurisdiction that are designated nonattainment. Application of this FIP does not relieve source owners or operators or permit applicants from their obligation to comply with all applicable EPA-approved implementation plan requirements for sources within the jurisdiction of the MDAQMD. As discussed in section II.B of this document, the 2023 LA/LD action disapproved elements of the MDAQMD's NNSR program that the EPA identified as deficient; however, those disapproved elements remain in

the SIP.⁴⁴ Upon finalization of this FIP, permit applicants would still be required to comply with the MDAQMD SIP and therefore must still submit permit applications to the MDAQMD as that SIP requires, among other requirements. Permit applicants would therefore need to obtain two permits—one permit from the EPA under this FIP and one permit from the MDAQMD under the rules in the SIP. Applicants would not be allowed to begin actual construction until both the EPA and MDAQMD issue the respective permits under this FIP and the SIP; therefore, applicants would be advised to submit applications to each agency simultaneously to ensure parallel processing.

Where permit approval criteria between the MDAQMD's SIP and this FIP conflict—for example, the procedures to determine the quantity of offsets at a major modification, a deficiency in the MDAQMD's NNSR program—permit applicants would need to demonstrate compliance with the requirements of this FIP, since this FIP fills the gaps in the MDAQMD's NNSR program. The EPA does not anticipate that permit requirements in the EPA-issued FIP would be more stringent than the requirements in the SIP except for those that address the deficiencies the EPA identified in the 2023 LA/LD action. To the extent that there are any differences in the required application materials under the FIP versus the SIP, the applicant would need to comply with both requirements when submitting its application.

The EPA would directly implement and enforce the FIP. Enforcement authority is provided under CAA section 113(a), which authorizes the EPA to impose penalties including requiring compliance with the applicable implementation plan within a specified amount of time, payment of a civil penalties or enforcing through a civil judicial action.

III. Proposed FIP Requirements

The proposed FIP would apply to construction of new major sources and major modifications at existing major sources located within ozone and PM₁₀ nonattainment areas in the MDAQMD's jurisdiction. The proposed FIP includes the following sections: Plan Overview, Definitions, Applicability, Permit Approval Criteria, Public Participation Requirements, Final Permit Issuance and Administrative and Judicial Review, and Administration and Delegation of the Major NSR Plan for the MDAQMD. The following sections

³⁹ Id.

⁴⁰ Id. at 42262.

⁴¹ Id. at 42266. On January 29, 2021, the D.C. Circuit Court of Appeals issued a decision in *Sierra Club v. U.S. EPA*, which vacated an EPA regulation that allowed the use of reductions of an ozone precursor to offset increases in a different ozone precursor, i.e., "interprecursor trading." *Sierra Club v. EPA*, 21 F.4th 815, 819–823 (D.C. Cir. 2021). On July 19, 2021, the EPA removed the ozone interprecursor trading provisions in 40 CFR 51.165(a)(11). 86 FR 37918 (July 19, 2021).

⁴² 88 FR 42258.

⁴³ Id.

⁴⁴ 88 FR 42258, 42268.

summarize the requirements of the proposed FIP. As explained in section II.C. of this document, the content of this proposed FIP is generally based on appendix S, which is the EPA's transitional program for areas that lack an approved program. This FIP also includes, however, elements of the EPA's Federal Major New Source Review Program for Nonattainment Areas in Indian Country at 40 CFR part 49.

A. Plan Overview

The plan overview paragraph (paragraph (a)) establishes the purpose of the FIP and where it applies, and it sets forth the general provisions that apply to the FIP. The purpose of the FIP is to establish preconstruction permitting requirements for new major stationary sources and major modifications at existing major stationary sources located in the MDAQMD portion of the Los Angeles-San Bernardino County (West Mojave Desert) ozone nonattainment area and the San Bernardino County and Trona Planning Area PM₁₀ nonattainment areas. The FIP would apply until such time as MDAQMD submits a revised SIP that resolves all the deficiencies identified by the EPA and the EPA fully approves the MDAQMD's NNSR SIP.

If the EPA fully approves the MDAQMD's NNSR SIP, the EPA will transition its authority to the MDAQMD. This may include suspending the issuance of Federal NNSR permit decisions under this FIP for permit actions that are pending upon the effective date of the EPA's approval of the MDAQMD's NNSR SIP. The EPA may retain jurisdiction over Federal NNSR permit applications for which the EPA has issued a proposed permit decision, but for which final agency action or the exhaustion of all administrative and judicial appeals processes (including any associated remand actions), or both, have not yet been concluded or completed by the effective date of such approval. The EPA would address these details of the transition in the approval of the MDAQMD's NNSR SIP submission.

If the EPA fully approves the MDAQMD's NNSR SIP, permits issued under this FIP will remain in effect and will be enforceable by the EPA. The EPA will continue to conduct the general administration of such permits and will retain authority to process and issue any and all subsequent NNSR permit actions relating to such permits. The EPA may transition this authority to the MDAQMD following a request from MDAQMD and after the EPA determines under CAA section 110(a)(2)(E)(i) that

the MDAQMD has the necessary funding, personnel and authority and that the plan approval includes the authority for the MDAQMD to conduct general administration of such permits, the necessary authority to process and issue subsequent permit actions relating to such permits and the authority to enforce such permits. This detail of the transition would also be addressed in the plan approval action.

B. Definitions

Unless otherwise stated, the definitions in appendix S apply. Paragraph (b) contains additional definitions of the terms "Actual emissions," "Enforceable as a practical matter," "Environmental Appeals Board," "Nonattainment pollutant," "Reviewing authority," and "Significant." The EPA included definitions for these terms to ensure that they are adequate and appropriate for implementing this specific FIP.

The definition of "Actual emissions" is similar to the definition in paragraph II.A.13 of appendix S but does not provide for a reviewing authority to presume that source-specific allowable emissions are equivalent to the source's actual emissions, since that provision is not relevant for the implementation of this FIP.

The EPA included the definition of "Enforceable as a practical matter" because the term is used, but is not defined, in appendix S.

The EPA included the definition of "Environmental Appeals Board" because it is a necessary term for describing the permit appeals process.

The EPA included the definition of "Nonattainment pollutant" to simplify the regulatory language in the FIP and ensure that this FIP would apply to sources emitting nonattainment pollutants in the MDAQMD.

The EPA included the definition of "Reviewing authority" to specify that the EPA administers this FIP unless the EPA has delegated its authority to the MDAQMD as specified in paragraph (g)(2) of § 52.285.

The EPA modified the definition of "Significant" as that term is defined in appendix S to also include applicability threshold in CAA section 182(c)(6), which applies in nonattainment areas classified Serious and above for ozone. Section 182(c)(6) says that a change to the method of operation of a stationary source or a physical change to the source itself cannot be considered de minimis for purposes of determining the applicability of NNSR permitting requirements unless the increase in net emissions of NO_x or VOC from the source does not exceed 25 tons when

aggregated with all other net increases in emissions from the source over any period of five consecutive calendar years, which includes the calendar year in which the increase occurred.

C. Applicability

This applicability paragraph (paragraph (c)) is titled "Does the plan apply to me?" This paragraph provides the criteria that a source is required to use for determining whether the FIP applies to the source. It states that the FIP applies to a source that will propose to construct a new major source (as defined in paragraph II.A.4 of appendix S) or a major modification at the permit applicant's existing major source (as defined in paragraph II.A.5 of appendix S). This paragraph also provides requirements concerning any source or modification that becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980.

D. Permit Approval Criteria

The permit approval criteria paragraph (paragraph (d)) provides the criteria the EPA will use in reviewing a permitting application and in granting or denying an NNSR permit. The criteria include the requirements specified in CAA section 173 and appendix S. With specific regard to one deficiency that the EPA identified in MDAQMD's NNSR rules as explained in the June 30, 2023, final rule, CAA section 173(c)(1) and 40 CFR 51.165 requires that state permit programs must ensure that emission increases from new or modified major stationary sources are offset by real reductions in actual emissions. These requirements are included in paragraph (d)(2) of § 52.285.

This paragraph also adopts by reference requirements from 40 CFR part 51, appendix S. Major new sources or major modifications locating in areas designated as nonattainment for a pollutant for which the source or modification would be major may be allowed to construct only if the conditions set forth in appendix S are met. These requirements are incorporated in section (d) of the proposed FIP.

In addition to these requirements, the proposed paragraph also requires an applicant to submit certain information in its permit application to ensure that the information necessary to process the permit application is provided to the reviewing authority, consistent with the CAA requirements. This paragraph also requires the submission of information necessary for determining the potential effects on federally listed endangered or

threatened species or designated critical habitats, and on historic properties. Additionally, the paragraph provides instructions for submitting a permit application to the EPA. Finally, the proposed paragraph specifies that the reviewing authority shall require monitoring, recordkeeping, and reporting conditions in a permit as necessary to facilitate compliance with the terms of a permit and make them enforceable as a practical matter.

E. Public Participation Requirements

The public participation paragraph (paragraph (e)) identifies the information for a project that must be made publicly available. It also describes how the public will be notified of a draft permit and how the public can comment and request a public hearing. These requirements are necessary to ensure that the FIP meets the requirements of the CAA and the EPA regulations, which require reviewing authorities to afford adequate opportunities for public participation in agency decision-making.

F. Final Permit Issuance and Administrative and Judicial Review

Paragraph (f) specifies when the final permit will be effective and addresses opportunities for administrative and judicial review of permitting decisions. Generally, a final permit becomes effective 30 days after service of the final permit decision, unless (1) a later effective date is specified in the permit; (2) review of the final permit is requested according to the appeal procedures in 40 CFR 124.19;⁴⁵ or (3) no comments requested a change in the draft permit or a denial of the permit, in which case the reviewing authority may make the permit effective immediately upon issuance.

This paragraph also provides general requirements concerning the administrative record for the final permit decision, explaining the required contents of the administrative record, which is the basis for permit decisions by the reviewing authority. This paragraph also includes the requirements for permit reopenings and rescissions. Permit reopenings must provide for public notice and an opportunity for public comment, except for reopenings that do not increase emission limitations. Permit rescissions, which the reviewing authority may grant at the source's request if an application for rescission shows that the provisions of this paragraph would not

apply to the source or modification, require public notice.

G. Administration and Delegation of the Major NSR Plan for the MDAQMD

Paragraph (g) specifies that the EPA is the reviewing authority for the FIP. It also provides a process for delegating the administration of the FIP to the MDAQMD, publication of notice of a delegation agreement, and revision or revocation of a delegation agreement.

H. SIP Replacement of All or Any Part of This FIP

The MDAQMD may submit revisions to its SIP at any time to address deficiencies identified by the EPA and the CAA requirements that are covered by the FIP. If the EPA approves such a SIP submittal, the approved MDAQMD rules would apply rather than the FIP, in whole or in part, as appropriate. SIP replacement of part of this FIP would still require the permit applicant to comply with the portion of the FIP that has not been replaced by the approved SIP. For the EPA to remove all FIP provisions, the MDAQMD would need to address the deficiencies identified in the EPA's June 2023 final rulemaking action.⁴⁶ As mentioned earlier in this document, the EPA is aware that the MDAQMD intends to submit revised rules to partially correct the deficiencies the EPA identified in the June 2023 final rulemaking action, which, if approved, could replace the corresponding requirements of this FIP. Until such time, permit applicants would be required, upon finalization of this FIP action, to comply with the FIP as well as the MDAQMD's SIP-approved NNSR regulation. As explained in section II.C of this document, this means permit applicants would need to submit permit application materials to both the EPA for review under the FIP and, separately, to the MDAQMD.

I. Severability

This FIP is a multifaceted regulatory instrument that addresses different NNSR requirements under the CAA, as detailed in the specific sections of this document that focus on the discrete contents of this FIP. The EPA intends the portions of this FIP to be severable from other portions, though the EPA took the approach of including all the parts in one rulemaking rather than promulgating multiple rules.

For example, the permit approval criteria state that the reviewing authority shall not approve a permit application unless it meets criteria

required under the CAA and appendix S. Those criteria include:

- the lowest achievable emission rate requirement;
- the certification that all existing major sources owned or operated in California are in compliance or on a schedule for compliance with all applicable emission limitations and standards under the CAA;
- the requirement to obtain offsets from existing sources in the area of the proposed source such that there will be reasonable progress toward attainment of the applicable NAAQS;
- the requirement to demonstrate that the offsets will provide a net air quality benefit in the affected area as required under part 51, appendix S, paragraph IV.A, Condition 4;
- the requirement to demonstrate that emissions reductions otherwise required by the CAA are not credited for purposes of satisfying the offset requirements of the FIP; and
- the analysis of alternative sites, sizes, production processes, and environmental control techniques to demonstrate that the benefits of the source or modification significantly outweigh the environmental and social costs imposed as a result of the source's location, construction, or modification.

Each of these requirements is independent and may be severable. Should the MDAQMD submit a SIP revision that corrects some, but not all, of the deficiencies identified in our June 30, 2023 rulemaking, the permit approval criteria for this FIP could be limited to the remaining deficiencies the EPA identified.⁴⁷ As described in section II.C of this document, permit applicants would still need to comply with any portions of the FIP that remain after the EPA approves the MDAQMD's revised rules in the SIP. Likewise, if a court invalidates any one of these elements of the FIP, the EPA intends the remainder of this action to remain effective, as the EPA finds each portion of it to be appropriate even if one or more parts of it have been set aside.

IV. Environmental Justice Considerations

This section summarizes environmental justice data for areas that would be impacted by this proposed action for informational and transparency purposes only. The EPA notes that the following discussion about environmental justice data is not a basis for this action and is distinct

⁴⁵ 40 CFR 124.19 establishes the appeal process for petitioning for review of a permit decision, including how to initiate an appeal, the deadline for filing a petition, and what to include in a petition.

⁴⁶ 88 FR 42258.

⁴⁷ 88 FR 42264–42266; See also 87 FR 72434, 72438 (November 25, 2022).

from the statutory obligations discussed in this proposal under the CAA. The CAA and applicable implementing regulations neither prohibit nor require an evaluation of environmental justice and consideration of environmental justice did not inform the regulatory requirements included in this proposal. The EPA identified environmental burdens and susceptible populations in communities with potential environmental justice concerns in the MDAQMD portion of the West Mojave Desert ozone nonattainment area and the San Bernardino County and Trona Planning Area PM₁₀ nonattainment areas using a screening-level analysis for ozone and PM₁₀ in the West Mojave Desert using the EPA's environmental justice screening and mapping tool ("EJSCREEN").⁴⁸ The EJSCREEN information and related supporting documentation for this action are available in the public docket for this action.

The area in which the FIP would apply is a large portion of San Bernardino County, California (all but the southwest portion of the County). The EPA used EJSCREEN to look at existing major stationary sources located in the 15 cities in the portion of San Bernardino County that is in the MDAQMD's jurisdiction.⁴⁹ EJSCREEN shows that the population of San Bernardino County, California is 2,192,817, although a significant portion of the population lives in the area that is outside the jurisdiction of the MDAQMD and therefore outside of the geographic area that would be subject to this proposed FIP. The 15 cities (and their populations as provided in EJSCREEN) are Daggett (553), Oro Grande (4,899), Ivanpah (1), Hinkley (436), Barstow (27,835), Victorville (94,380), Trona (1,546), Adelanto (19,567), Kelso (1), Newberry Springs (488), Needles (7,844), Lucerne Valley (2,778), Edwards Air Force Base (6,579), Hesperia (60,788), and China Lake (32,020).

The EJSCREEN results show 13 of the 15 cities (except for the cities of Needles and Oro Grande) have percentiles above

the general 80th percentile nationally⁵⁰ for the ozone EJ index or the supplemental ozone EJ index. None of the cities exceeds the general 80th percentile nationally for the PM EJ index or the supplemental PM EJ index.

The EPA also looked at the EJSCREEN's socioeconomic indicators called "demographic index," "limited English-speaking households," and "less than high school education." For the "demographic index," the results show that 7 of the 15 cities have percentiles that exceed the general 80th percentile nationally. These cities are Daggett, Ivanpah, Barstow, Victorville, Adelanto, Kelso, and Hesperia. The "demographic index" is generally the average of an area's percent minority and percent low-income population.

For the "limited English-speaking households" socioeconomic indicator, the results show that 4 of the 15 cities exceed the general 80th percentile nationally; these cities are Ivanpah, Hinkley, Kelso, and Lucerne Valley. For the "less than high school education" socioeconomic indicator, the results show that 8 of the 15 cities exceeded the general 80th percentile nationally; these cities are Hinkley, Adelanto, Lucerne Valley, Ivanpah, Victorville, Kelso, and Hesperia.

The EPA intends to address any potential EJ-related concerns that may be associated with the socioeconomic indicators for the "demographic index," "limited English-speaking households," and "less than high school education" through outreach and public participation for the permits issued under the FIP. This work includes announcing the opportunity to comment on each permit and making proposed permit actions available to the public during the public comment period with an opportunity for a public hearing. Given that the implementation and public participation methods are similar to those in the District's currently applicable permit program, the EPA does not anticipate any change to these requirements resulting from the finalization of this FIP as proposed.

V. Proposed Action and Request for Public Comment

In accordance with CAA sections 110(c) and 301(a),⁵¹ the EPA is proposing to promulgate a FIP for the NNSR program for the MDAQMD portion of the West Mojave Desert ozone nonattainment area and the San Bernardino County and Trona Planning Area PM₁₀ nonattainment areas. The FIP would apply only to construction of new major stationary sources and major modifications at existing major stationary source in these nonattainment areas. The proposed FIP implements statutory requirements in CAA sections 110(c)(1), 172(c)(5), 173, 179(b), 182(c) and (d), 189(a)(1)(A) and (e), 301(a), and 302.

The FIP will be directly implemented and enforced by the EPA. The proposed FIP authorizes the EPA to delegate implementation of the FIP to the MDAQMD if the District requests such delegation. The FIP would apply until the MDAQMD revises its SIP to address deficiencies identified by the EPA and the EPA fully approves the MDAQMD's NNSR SIP.

The EPA will accept comments from the public on this proposed FIP for the next 45 days. The deadline and instructions for submission of comments are provided in the **DATES** and **ADDRESSES** sections at the beginning of this proposed rule.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023), and was, therefore, not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) because the proposed rule implements existing requirements under the CAA and 40

⁴⁸ EJSCREEN provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN is available at: <https://www.epa.gov/ejscreen/what-ejscreen>. The EPA used EJSCREEN to obtain environmental and demographic indicators. These indicators are included in EJSCREEN reports that are available in the rulemaking docket for this action. However, EJSCREEN is not a detailed risk analysis. It is a screening tool that examines some of the relevant issues related to environmental justice, and there is uncertainty in the data included.

⁴⁹ Information about the existing major stationary sources is available on the MDAQMD's website. See <https://www.mdaqmd.ca.gov/>.

⁵⁰ The EPA has provided that, if any of the EJ indices for the areas under consideration are at or above the 80th percentile nationally, then further review may be appropriate. However, it is important to note that an area with any EJ indices at or above the 80th percentile nationally does not necessarily mean that the area is an "EJ Community." As stated previously, EJSCREEN provides screening-level indicators, not a determination of the existence or absence of EJ concerns. See: <https://www.epa.gov/ejscreen/how-interpret-ejscreen-data>.

⁵¹ Under CAA section 301(a), the EPA is authorized to prescribe such regulations as are necessary to carry out its functions under this chapter.

CFR 51.160 through 51.165. The Office of Management and Budget (OMB) has previously approved the information collection activities in the existing prevention of significant deterioration (PSD) and NNSR regulations under OMB control number 2060–0003. The burden associated with obtaining an NNSR permit for a major stationary source undergoing a major modification is already accounted for under the approved information collection requests. Thus, the EPA is not conducting an information collection request for this action.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action is unlikely to impact small entities because the permitting requirements implemented through this action are applicable only to construction or modification of major stationary sources of air pollution. In the MDAQMD, major sources are those that emit, or have the potential to emit 25 tons per year or more of NO_x, SO_x, or VOC; or 15 tons per year or more of PM₁₀. To the extent that any small entities would own or operate sources capable of emitting this much air pollution, the requirements of this action apply only to construction of new major sources, or major modifications to existing major sources, located in the portions of the MDAQMD that are subject to the requirements of this action. The EPA does not have information to suggest that there currently are a substantial number of major stationary sources located in the MDAQMD that are owned or operated by small entities. The Agency also does not have any information on future modifications that any such existing major sources may engage in after finalization of this FIP. Further, the Agency does not have information that suggests one or more small entities will seek to construct a new major stationary source in the MDAQMD.

Even if the Federal permitting requirements established in this FIP could be applicable to one or more small entities, these requirements would not have significant economic impact on such a small entity. Furthermore, any impact would not affect a substantial number of small entities. This proposed FIP ensures that such small entities and other sources subject to the FIP requirements meet CAA requirements to which these sources should have already been subject. Upon finalization of this action, sources applying for a permit will be required to submit application materials to the EPA in

compliance with the proposed FIP. These sources are already subject to NNSR requirements under the District's SIP, including, the requirements to submit applications, to obtain offsets, and to install pollution control technology that satisfies Federal standards. Consequently, the incremental impact associated with application of the specific requirements of the NNSR regulations for certain sources emitting nonattainment criteria pollutants or its precursors is expected to be de minimis, primarily pertaining to the amount of offsets needed.

D. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain an unfunded mandate of \$100 million or more, as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because this proposed rule would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that the tribe has jurisdiction, and it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866. The EPA does not believe the environmental health or safety risks

addressed by this action present a disproportionate risk to children because it implements specific standards established by Congress in statutes.

However, EPA's *Policy on Children's Health* applies to this action.

Information on how the Policy was applied is available under "Children's Environmental Health" in the Supplementary Information section of this preamble.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing our Nation's Commitment to Environmental Justice for All

The EPA believes that it is not practicable to assess whether the human health or environmental conditions that exist prior to this action result in disproportionate and adverse effects on communities with environmental justice concerns. While the EPA can identify the existing major sources in the nonattainment areas that would be impacted by this action, the EPA cannot quantify the number or types of sources that will undertake major modifications in the future. Additionally, the EPA cannot know whether new major sources will locate in the nonattainment area and what emissions these sources may have. The impacts of the proposal on are likely to vary greatly depending on the source category, number and location of facilities, and the pollutants and potential controls addressed. Therefore, while the EPA cannot quantify the precise baseline conditions and impacts, to the extent that this action will have impacts, it will not result in disproportionate and adverse effects on communities with EJ concerns as compared with baseline human health and environmental conditions.

Upon finalization of this action, the EPA would replace the MDAQMD in implementation of the District's NNSR program through the FIP. Therefore, the EPA does not anticipate that this action,

upon finalization, will result in any negative impacts to human health and the environment negative impacts. If this action has any impact on human health or the environment it will be beneficial in so far as the FIP action will address deficiencies associated with the calculation of emission offsets in the NNSR program. As explained in section II of this NPRM, this FIP is being promulgated to address several deficiencies with the MDAQMD's NNSR program. While the EPA has not analyzed the health impacts nor the emissions impacts from these deficiencies, the deficient provisions are less stringent than the Federal NNSR requirements that the EPA will be applying if this proposed FIP is finalized. Therefore, in so far as the EPA can qualitatively identify impacts to human health and the environment, the EPA expects this action, if finalized, would ensure the protections provided by the CAA and EPA's implementing regulations will be fully realized.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ammonia, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Michael Regan,
Administrator.

For the reasons stated in the preamble, part 52 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.285 is added to read as follows:

§ 52.285 Review of new sources and modifications—Mojave Desert Air Quality Management District.

(a) *Plan overview*—(1) *What is the purpose of the Federal Implementation Plan (FIP or “plan”)?* The FIP has the following purposes:

(i) It establishes the Federal preconstruction permitting requirements for new major sources and major modifications located in nonattainment areas within the Mojave

Desert Air Quality Management District (MDAQMD or “District”) that are major for a nonattainment pollutant.

(ii) The plan serves as the Federal nonattainment new source review (NNSR or “nonattainment major NSR”) plan for the area described in paragraph (a)(1)(i) of this section, which the EPA has determined does not meet all of the Clean Air Act (CAA or “Act”) title I part D requirements for NNSR programs. Sources subject to the plan must comply with the provisions and requirements of 40 CFR part 51, appendix S. The FIP also sets forth the criteria and procedures that the reviewing authority (as defined in paragraph (b)(1)(v) of this section) must use to issue permits under the plan. For the purposes of the plan, the term *SIP* means any EPA-approved implementation plan for the area administered by the MDAQMD.

(iii) Paragraph (f)(3) of this section sets forth procedures for appealing a permit decision issued under the plan.

(iv) The plan does not apply in Indian country, as defined in 18 U.S.C. 1151 and 40 CFR 49.167, located within the MDAQMD.

(2) *Where does the plan apply?* (i) The provisions of the plan apply to the proposed construction of any new major stationary source or major modification in the MDAQMD that is major for a nonattainment pollutant, if the stationary source or modification is located anywhere in the designated nonattainment area.

(3) *What general provisions apply under the plan?* The following general provisions apply to you as an owner or operator of a source:

(i) If you propose to construct a new major source or a major modification in a nonattainment area in the MDAQMD, you must obtain a Federal NNSR permit (“permit”) under the plan before beginning actual construction. You may not begin actual construction after the effective date of the plan without applying for and receiving a Federal NNSR permit that authorizes construction pursuant to the plan.

(ii) You must construct and operate your source or modification in accordance with the terms of your permit issued under the plan.

(iii) Issuance of a permit under the plan does not relieve you of the responsibility to fully comply with applicable provisions of any EPA-approved implementation plan or FIP, and any other requirements under applicable law. This includes obligations to comply with any EPA-approved SIP provisions that satisfy Federal new source review (NSR) requirements.

(b) *Definitions.* For the purposes of the plan, the definitions in 40 CFR part 51, appendix S, paragraph II.A, and 40 CFR 51.100 apply, except for paragraphs (b)(1) through (6) of this section, which replace the corresponding definitions found in part 51, appendix S:

(1) *Actual emissions* means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (b)(1)(i) and (ii) of this section, except that this paragraph (b)(1) shall not apply for calculating whether a significant emissions increase has occurred. Instead, 40 CFR part 51, appendix S, paragraphs II.A.24 and 30, shall apply for those purposes.

(i) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(ii) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) *Enforceable as a practical matter* means that an emission limitation or other standard is both legally and practicably enforceable as follows:

(i) An emission limitation or other standard is legally enforceable if the reviewing authority has the legal power to enforce it.

(ii) Practical enforceability for an emission limitation or for other standards (design standards, equipment standards, work practices, operational standards, pollution prevention techniques) in a permit for a source is achieved if the permit's provisions specify:

(A) A limitation or standard and the emissions units or activities at the source subject to the limitation or standard;

(B) The time period for the limitation or standard (e.g., hourly, daily, monthly and/or annual limits such as rolling annual limits); and

(C) The method to determine compliance, including appropriate monitoring, recordkeeping, reporting, and testing.

(3) *Environmental Appeals Board* means the Board within the EPA described in 40 CFR 1.25(e).

(4) *Nonattainment pollutant* means any regulated NSR pollutant for which the MDAQMD, or portion of the MDAQMD, has been designated as nonattainment, as codified in 40 CFR 81.305, as well as any precursor of such regulated NSR pollutant specified in 40 CFR part 51, appendix S, paragraph II.A.31.(ii)(b).

(5) *Reviewing authority* means the Administrator of EPA Region IX, but it may include the MDAQMD if the Administrator delegates the power to administer the FIP under paragraph (g) of this section.

(6) *Significant* means, in reference to an emissions increase or a net emissions increase, and notwithstanding the definition of “significant” in 40 CFR part 51, appendix S, paragraph II.A.10, any increase in actual emissions of volatile organic compounds or oxides of nitrogen that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area if such emissions increase of volatile organic compounds or oxides of nitrogen exceeds 25 tons per year when aggregated with all other net emissions increases from the source over any period of 5 consecutive calendar years that includes the calendar year in which such increase occurred.

(c) *Does the plan apply to me?* (1) In any MDAQMD nonattainment area, the requirements of the plan apply to you under the following circumstances:

(i) If you propose to construct a new major stationary source and your source is a major source of nonattainment pollutant(s).

(ii) If you own or operate a major stationary source and propose to construct a major modification, where your source is a major source of nonattainment pollutant(s) and the proposed modification is a major modification for the nonattainment pollutant.

(2) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of the plan shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(d) *Permit approval criteria*—(1) *What are the general criteria for permit*

approval? The criteria for approval of applications for permits submitted pursuant to the plan are provided in part D of title I of the Act and in 40 CFR 51.160 through 51.165 and 40 CFR part 51, appendix S.

(2) *What are the plan-specific criteria for permit approval?* Consistent with the requirements in 40 CFR part 51, appendix S, the reviewing authority shall not approve a permit application unless it meets the following criteria:

(i) The lowest achievable emission rate (LAER) requirement for any NSR pollutant subject to the plan and monitoring, recordkeeping, reporting, and testing as necessary to assure compliance with LAER.

(ii) Certification that all existing major sources owned or operated by the applicant in California are in compliance or, on a schedule for compliance, with all applicable emission limitations and standards under the Act.

(iii) Any source or modification subject to the plan must obtain emission reductions (offsets) from existing sources in the area of the proposed source (whether or not under the same ownership) such that there will be reasonable progress toward attainment of the applicable NAAQS.

Notwithstanding 40 CFR part 51, appendix S, paragraph IV.G.5, interprecursor offsetting is not permitted between precursors of ozone. A demonstration of reasonable progress toward attainment shall include:

(A) A demonstration that the emission offsets will provide a net air quality benefit in the affected area, as required under 40 CFR part 51, appendix S, paragraph IV.A, Condition 4.

(B) A demonstration that emissions reductions otherwise required by the Act are not credited for purposes of satisfying the offset requirements in this paragraph (d)(2)(iii) and part D of title I of the Act.

(iv) An analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed major source or major modification that demonstrates that the benefits of the proposed major source or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(3) *What are the application requirements?* The owner or operator of any proposed new major stationary source or major modification shall submit a complete application using EPA Region IX’s electronic system, which is described in paragraph (d)(3)(ii) of this section. The application must include the information listed in

this paragraph (d)(3) as well as the demonstrations to show compliance with paragraphs (d)(2)(i) through (iv) of this section. The reviewing authority’s designation that an application is complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.

(i) *Application content requirements.* (A) Identification of the permit applicant, including contact information.

(B) Address and location of the new or modified source.

(C) Identification and description of all emission points, including information regarding all nonattainment pollutants emitted by all emissions units included in the new source or modification.

(D) A process description of all activities, including design capacity, that may generate emissions of nonattainment pollutants, in sufficient detail to establish the basis for the applicability of standards.

(E) A projected schedule for commencing construction and operation for all emissions units included in the new source or modification.

(F) A projected operating schedule for each emissions unit included in the new source or modification.

(G) A determination as to whether the new source or modification will result in any secondary emissions.

(H) The emission rates of all regulated NSR pollutants, including fugitive and secondary emission rates, if applicable. The emission rates must be described in tons per year (tpy). If necessary, shorter-term rates must be described to allow for compliance using the applicable standard reference test method or other methodology specified (*i.e.*, grams/liter, parts per million volume (ppmv) or parts per million weight (ppmw), lbs/MMBtu).

(I) The calculations on which the emission rate information is based, including fuel specifications, if applicable, and any other assumptions used to determine the emission rates (*e.g.*, higher heating value (HHV), sulfur content of natural gas, VOC content).

(J) The calculations, pursuant to 40 CFR part 51, appendix S, paragraph IV.I and IV.J, that are used to determine applicability of the plan, including the emission calculations (increases or decreases) for each project that occurred during the contemporaneous period, as applicable.

(K) The calculations, pursuant to 40 CFR part 51, appendix S, paragraph IV.A, used to determine the quantity of offsets required for the new source or modification.

(L) Identification of actual emission reductions that meet the offset integrity criteria of being real, surplus, quantifiable, permanent and federally enforceable.

(M) If applicable, a description of how performance testing will be conducted, including test methods and a general description of testing protocols.

(N) Information necessary to determine whether issuance of such permit:

(1) May adversely affect federally-listed threatened or endangered species or the designated critical habitat of such species; or

(2) Has the potential to cause adverse effects on historic properties.

(ii) *Application process requirements.* To submit an application required under the plan, applicants may submit electronically through the Central Data Exchange (CDX)/Compliance and Emissions Data Reporting Interface (CEDRI) or submit by mail.

(A) CDX/CEDRI is accessed through <https://cdx.epa.gov>. First-time users will need to register with CDX. The CDX platform will also be used for any permit reporting requirements.

(B) Applicants that do not apply using CDX/CEDRI shall mail a signed application using certified mail (do not request signature) to: Air and Radiation Division, Permits Office (Air-3-1), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

(C) Applicants that apply using certified mail must email a copy of the application and the certified mail tracking number to provide notification of delivery receipt to R9AirPermits@epa.gov.

(4) *What are the requirements for monitoring, recordkeeping, and reporting?* The reviewing authority shall require in the conditions of a permit such monitoring, recordkeeping, and reporting as necessary to facilitate compliance with the terms of a permit and to make them enforceable as a practical matter.

(e) *Public participation requirements—(1) What permit information will be publicly available?* With the exception of any confidential information as defined in 40 CFR part 2, subpart B, the reviewing authority must make available for public inspection the documents listed in paragraphs (e)(1)(i) through (iv) of this section. The reviewing authority must make such information available for public inspection at the appropriate EPA Regional Office and in at least one location in the area affected by the source, such as the MDAQMD headquarters location or a local library.

(i) All information submitted as part of your permit application as required under paragraph (d)(3) of this section.

(ii) Any additional information requested by the reviewing authority.

(iii) The reviewing authority's analysis of the application and any additional information submitted by you, including the LAER analysis and, where applicable, the analysis of your emissions reductions (offsets), your demonstration of a net air quality benefit in the affected area and your analysis of alternative sites, sizes, production processes and environmental control techniques.

(iv) A copy of the draft permit or the draft decision to deny the permit with the justification for denial.

(2) *How will the public be notified and participate?* (i) Before issuing a permit under the plan, the reviewing authority must prepare a draft permit and provide adequate public notice to ensure that the affected community and the general public have reasonable access to the application and draft permit information, as set out in this paragraph (e)(2)(i) and paragraph (e)(2)(ii) of this section. The public notice must provide an opportunity for public comment and notice of a public hearing, if any, on the draft permit.

(A) The reviewing authority must mail a copy of the notice to you (the permit applicant), the MDAQMD (or the EPA if there is a delegation under paragraph (g) of this section), and the California Air Resources Board (CARB).

(B) The reviewing authority must comply with the methods listed in paragraph (e)(2)(i)(B)(1) or (2) of this section:

(1) The reviewing authority must post the notice on its website.

(2) The reviewing authority must publish the notice in a newspaper of general circulation in the area affected by the source.

(3) The reviewing authority may also include other forms of notice as appropriate. This may include posting copies of the notice at one or more locations in the area affected by the source, such as at post offices, libraries, community centers or other gathering places in the community.

(ii) The notices required pursuant to paragraph (c)(2)(i) of this section must include the following information at a minimum:

(A) Identifying information, including the name and address of the permit applicant (and the plant name and address if different);

(B) The name and address of the reviewing authority processing the permit application;

(C) The regulated NSR pollutants to be emitted, and identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project, including any emission limitations for these emissions unit(s);

(D) The emissions change involved in the permit action;

(E) Instructions for requesting a public hearing;

(F) The name, address and telephone number of a contact person in the reviewing authority's office from whom additional information may be obtained;

(G) Locations and times of availability of the information, listed in paragraph (e)(1) of this section, for public inspection; and

(H) A statement that any person may submit written comments, a written request for a public hearing or both, on the draft permit action. The reviewing authority must provide a period of at least 30 days from the date of the public notice for comments and for requests for a public hearing.

(3) *How will the public comment and will there be a public hearing?* (i) Any person may submit written comments on the draft permit and may request a public hearing. The comments must raise any reasonably ascertainable issue with supporting arguments by the close of the public comment period (including any public hearing). The reviewing authority must consider all comments in making the final decision. The reviewing authority must keep a record of the commenters and of the issues raised during the public participation process, and such records must be available to the public.

(ii) The reviewing authority must extend the public comment period under paragraph (e)(2) of this section to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(iii) A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised at the hearing.

(iv) If requested, the reviewing authority may hold a public hearing at its discretion to give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written statements. The reviewing authority may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision. The reviewing authority must provide notice of any public hearing at least 30 days prior to the date of the hearing. Public notice of the hearing may be

concurrent with that of the draft permit, and the two notices may be combined. Reasonable limits may be set upon the time allowed for oral statements at the hearing.

(v) The reviewing authority must make the written transcript of any hearing available to the public.

(f) *Final permit issuance and administrative and judicial review*—(1) *How will final action occur and when will my Federal NNSR permit become effective?* After making a decision on a permit application, the reviewing authority must notify you, the permit applicant, of the decision in writing, and, if the permit is denied, provide the reasons for such denial and the procedures for appeal. If the reviewing authority issues a final permit to you, it must make a copy of the permit available at any location where the draft permit was made available. In addition, the reviewing authority must provide adequate public notice of the final permit decision to ensure that the affected community, the general public and any individuals who commented on the draft permit have reasonable access to the decision and supporting materials. A final permit becomes effective 30 days after service of the final permit decision, unless:

(i) A later effective date is specified in the permit;

(ii) Review of the final permit is requested under paragraph (f)(3) of this section; or

(iii) No comments requested a change in the draft permit or a denial of the permit, in which case the reviewing authority may make the permit effective immediately upon issuance.

(2) *What is the administrative record for each final permit?* (i) The reviewing authority must base final permit decisions on an administrative record consisting of:

(A) All comments received during any public comment period, including any extension or reopening;

(B) The tape or transcript of any hearing(s) held;

(C) Any written material submitted at such a hearing;

(D) Any new materials placed in the record as a result of the reviewing authority's evaluation of public comments;

(E) Other documents in the supporting files for the permit that were relied upon in the decision-making;

(F) The final Federal NNSR permit;

(G) The application and any supporting data furnished by you, the permit applicant;

(H) The draft permit or notice of intent to deny the application or to terminate the permit; and

(I) Other documents in the supporting files for the draft permit that were relied upon in the decision-making.

(ii) The additional documents required under paragraph (f)(2)(i) of this section should be added to the record as soon as possible after their receipt or publication by the reviewing authority. The record must be complete on the date the final permit is issued.

(iii) Material readily available or published materials that are generally available and that are included in the administrative record under the standards of paragraph (f)(2)(i) of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in that file.

(3) *Can permit decisions be appealed?*

(i) Permit decisions may be appealed under the permit appeal procedures of 40 CFR 124.19, and the provisions of that section applicable to prevention of significant deterioration (PSD) permits shall apply to permit decisions under the FIP. A petition for review must be filed with the Clerk of the Environmental Appeals Board within 30 days after the reviewing authority serves notice of the issuance of a final permit decision under the plan, in accordance with 40 CFR 124.19.

(ii) An appeal under paragraph (f)(3)(i) of this section is, under section 307(b) of the Act, a prerequisite to seeking judicial review of the final agency action.

(4) *Can my permit be reopened?* The reviewing authority may reopen an existing, currently-in-effect permit for cause on its own initiative, such as if it contains a material mistake or fails to assure compliance with requirements in this section. However, except for those permit reopenings that do not increase the emission limitations in the permit, such as permit reopenings that correct typographical, calculation and other errors, all other permit reopenings shall be carried out after the opportunity for public notice and comment and in accordance with one or more of the public participation requirements under paragraph (e)(2) of this section.

(5) *Can my permit be rescinded?* (i) Any permit issued under this section, or a prior version of this section, shall remain in effect until it is rescinded under this paragraph (f)(5).

(ii) An owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirement in paragraph (f)(5)(iii) of this section may request that the reviewing authority rescind the permit or a particular portion of the permit.

(iii) The reviewing authority may grant an application for rescission if the application shows that the provisions of the plan would not apply to the source or modification.

(iv) If the reviewing authority rescinds a permit under this paragraph (f), the public shall be given adequate notice of the rescission determination in accordance with paragraph (e)(2)(i)(B) of this section.

(g) *Administration and delegation of the Federal nonattainment major NSR plan in the MDAQMD*—(1) *Who administers the FIP in the MDAQMD?* (i) The Administrator is the reviewing authority and will directly administer all aspects of the FIP in the MDAQMD under Federal authority.

(ii) The Administrator may delegate Federal authority to administer specific portions of the FIP to the MDAQMD upon request, in accordance with the provisions of paragraph (g)(2) of this section. If the MDAQMD has been granted such delegation, it will be the reviewing authority for purposes of the provisions for which it has been granted delegation.

(2) *Delegation of administration of the FIP to the MDAQMD.* This paragraph (g)(2) establishes the process by which the Administrator may delegate authority to the MDAQMD in accordance with the provisions in paragraphs (g)(2)(i) through (iv) of this section. Any Federal requirements under the plan that are administered by the delegate MDAQMD are enforceable by the EPA under Federal law.

(i) *Information to be included in the Administrative Delegation Request.* To be delegated authority to administer the FIP or specific portions of it, the MDAQMD must submit a request to the Administrator.

(ii) *Delegation Agreement.* A Delegation Agreement will set forth the terms and conditions of the delegation, will specify the provisions that the delegate MDAQMD will be authorized to implement on behalf of the EPA and will be entered into by the Administrator and the MDAQMD. The Agreement will become effective upon the date that both the Administrator and the MDAQMD have signed the Agreement or as otherwise stated in the Agreement. Once the delegation becomes effective, the MDAQMD will be responsible, to the extent specified in the Agreement, for administration of the provisions of the FIP that are subject to the Agreement.

(iii) *Publication of notice of the Agreement.* The Administrator will publish a notice in the **Federal Register** informing the public of any Delegation Agreement. The Administrator also will

publish the notice in a newspaper of general circulation in the MDAQMD. In addition, the Administrator will mail a copy of the notice to persons on a mailing list developed by the Administrator consisting of those persons who have requested to be placed on such a mailing list.

(iv) *Revision or revocation of an Agreement.* A Delegation Agreement may be modified, amended or revoked, in part or in whole, by the Administrator after consultation with the MDAQMD.

[FR Doc. 2024-14695 Filed 7-8-24; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 24-176; RM-11984; DA 24-562; FR ID 229917]

Television Broadcasting Services Cape Girardeau, Missouri

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Video Division, Media Bureau (Bureau), has before it a petition for rulemaking filed June 7, 2024, by Gray Television Licensee, LLC (Gray), the licensee of KFVS-TV, channel 11, Cape Girardeau, Missouri (Station or KFVS-TV). Gray held a construction permit to construct a facility on channel 32 at Cape Girardeau. Gray now requests that the Bureau substitute channel 11 for channel 32 at Cape Girardeau in the Table of TV Allotments, with the technical parameters as set forth in KFVS-TV's current license.

DATES: Comments must be filed on or before August 8, 2024 and reply comments on or before August 23, 2024.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Joan Stewart, Esq., Wiley Rein, LLP, 1776 K Street NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Video Division, Media Bureau, (202) 418-1647, at Joyce.Bernstein@fcc.gov, or Mark Colombo, Video Division, Media Bureau, (202) 418-7611, at Mark.Colombo@fcc.gov.

SUPPLEMENTARY INFORMATION: On May 5, 2021, the Bureau granted a petition for rulemaking submitted by Gray to

substitute channel 32 for channel 11 at Cape Girardeau for KFVS-TV. On June 23, 2021, Gray was granted a construction permit for its new channel, with an expiration date of June 23, 2024. In its Petition, Gray stated that it would be unable to complete construction of the channel 32 facility by the expiration date. Thus, Gray requests amendment of the Table of TV Allotments to allow it to continue to operate on channel 11. Gray proposes to specify the technical parameters of its currently licensed channel 11 facility. We believe that the Petitioner's channel substitution proposal for KFVS-TV warrants consideration. KFVS-TV is currently operating on channel 11 and the substitution of channel 11 for channel 32 in the Table of TV Allotments will allow the Station to remain on the air and continue to provide service to viewers within its service area. Given that Gray proposes to utilize its currently licensed parameters, we believe channel 11 can be substituted for channel 32 at Cape Girardeau as proposed, in compliance with the principal community coverage requirements of § 73.618(a) of the Commission's rules (rules), at coordinates 37°-25'-44.7" N and 089°-30'-14.2" W. In addition, we find that this channel change meets the technical requirements set forth in § 73.622(a) of the rules.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, MB Docket No. 24-176; RM-11984; DA 24-562, adopted June 28, 2024, and released June 28, 2024. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to FCC504@fcc.gov or call the Consumer & Government Affairs Bureau at (202) 418-0530 (VOICE), (202) 418-0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to

Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

Providing Accountability Through Transparency Act: The Providing Accountability Through Transparency Act, Public Law 118-9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of this notice of proposed rulemaking/further notice of proposed rulemaking is available at <https://www.fcc.gov/proposed-rulemakings>.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622, amend the table in paragraph (j), under Missouri, by revising the entry for Cape Girardeau to read as follows:

§ 73.622 Digital television table of allotments.

*	*	*	*	*
(j) * * *				
Community			Channel No.	
*	*	*	*	*
Missouri				
*	*	*	*	*
Cape Girardeau			11, 36.	
*	*	*	*	*
*	*	*	*	*

[FR Doc. 2024-15040 Filed 7-8-24; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 572****[Docket No. NHTSA–2023–0031]****RIN 2127–AM20****Anthropomorphic Test Devices; THOR 50th Percentile Adult Male Test Dummy; Incorporation by Reference**

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This document announces the availability of documents supplementing NHTSA's September 2023 notice of proposed rulemaking to amend NHTSA's regulations to include an advanced crash test dummy, the Test Device for Human Occupant Restraint 50th percentile adult male.

DATES: The documents referenced in this notification will be available in the docket as of July 9, 2024. You should submit your comments early enough to be received not later than August 8, 2024.

ADDRESSES: You may submit comments electronically to the docket identified in the heading of this document by visiting the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

- **Mail:** Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- **Hand Delivery or Courier:** West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9826 before coming.

- **Fax:** (202) 493–2251.

Instructions: All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including

any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. You may also access the docket at 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: (202) 366–9826.

Confidential Business Information: If you claim that any of the information in your comment (including any additional documents or attachments) constitutes confidential business information within the meaning of 5 U.S.C. 552(b)(4) or is protected from disclosure pursuant to 18 U.S.C. 1905, please see the detailed instructions given under the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Mr. Garry Brock, Office of Crashworthiness Standards, Telephone: (202) 366–1740; Email: Garry.Brock@dot.gov; Facsimile: (202) 493–2739. For legal issues, you may contact Mr. John Piazza, Office of Chief Counsel, Telephone: (202) 366–2992; Email: John.Piazza@dot.gov; Facsimile: (202) 366–3820. The address of these officials is: the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC, 20590.

SUPPLEMENTARY INFORMATION: On September 7, 2023, NHTSA published a Notice of Proposed Rulemaking (NPRM) to amend NHTSA's regulations to

include an advanced crash test dummy, the Test Device for Human Occupant Restraint (THOR) 50th percentile adult male (THOR–50M). The dummy represents an adult male of roughly average height and weight and is designed for use in frontal crash tests. The documentation for the dummy, including detailed design information, engineering drawings, qualification tests, and procedures for assembly and inspection, would be incorporated by reference in 49 CFR part 572, Anthropomorphic Test Devices.

This document notices the availability of additional research reports and a memorandum of understanding that are being placed in the research and rulemaking dockets, respectively. These documents are briefly described below.

Research Reports

The NPRM referenced a variety of research NHTSA had conducted to support the development of the THOR–50M dummy. Most of this research was published or made available in the research docket before the NPRM was published. However, the NPRM noted that research in several areas was ongoing and that additional research reports would be docketed after the NPRM was published.

That research has been completed and NHTSA is now docketing the associated research reports. As we did for other research reports and documentation referenced in the NPRM, these reports are being placed in the research docket, Docket No. NHTSA–2019–0106, and not the docket for this rulemaking.¹ Nevertheless, NHTSA intends these documents to be included as part of the rulemaking record for this rulemaking action. The following documents are being docketed:

- “Comparison of the THOR–50M IR–TRACC Measurement Device to an Alternative S-Track Measurement Device”
- “Analysis of THOR–50M Alternate Configurations in Gold Standard Sled Testing”
- “Development of an Alternative Shoulder for the THOR–50M”
- “THOR–50M In-dummy Data Acquisition System Evaluation”

Memorandum of Understanding Regarding Intellectual Property of Humanetics

NHTSA is also placing in the rulemaking docket a memorandum of

¹ As we explained in the NPRM, NHTSA did not place the dummy documentation and related research reports in the docket for this rulemaking action to avoid potential confusion from having identical documents docketed at different times in different dockets. A memorandum explaining this determination was docketed along with the NPRM.

understanding between NHTSA and Humanetics concerning the use of Humanetics proprietary information in NHTSA rulemaking activities. Humanetics is a global industrial technology group (including Human Solutions, Avalution, mg-sensors, ADT-LabTech, Fibercore, HITEC Sensor Development, and OpTek Systems) that, among other things, develops and manufacturers crash test dummies and components used in those dummies.

As NHTSA explained in the NPRM, portions of the shoulder assembly specified in the 2018 drawing package (referred to as the SD-3 shoulder) are covered by a patent issued to Humanetics. NHTSA has generally avoided specifying in part 572 patented components or copyrighted designs without either securing agreement from the rights-holder for the free use of (or reasonable license to) the item or developing an alternative unencumbered by any rights claims. In the NPRM, NHTSA explained the reasons for taking this position. Among other things, proprietary components may be modified by the proprietary source such that the original is no longer available, and the new part no longer fits. The proprietary source also may alter the part in ways that change the response of the dummy, such that dummies with the newer part do not provide the same response as dummies with the older part.²

NHTSA therefore designed, built, and tested an alternative design for a part of the shoulder assembly referred to as the shoulder pivot assembly that is not subject to any intellectual property claims. The proposed drawing package (the 2023 drawing package) included specifications for the SD-3 shoulder pivot assembly as well as the alternate shoulder pivot assembly so that NHTSA could use either one. In the NPRM, NHTSA specifically solicited comment on whether the final drawing package should include the SD-3 shoulder, the alternate shoulder, or both.

After the NPRM was published, NHTSA staff discussed with Humanetics the disposition of its intellectual property claims on various anthropomorphic test devices, including the THOR-50M.³ Humanetics' designs and drawings may include information that is subject to patent rights and/or copyrights. Based on these discussions, NHTSA and Humanetics reached the following understanding with respect to

Humanetics proprietary information used either in an NPRM or final rule. (Below we briefly summarize this understanding; the full terms can be found in the Memorandum of Understanding.)

Under the Memorandum of Understanding, for proprietary information used as part of a NHTSA proposed rulemaking under part 572, NHTSA may use such information as long as the information includes language notifying the public that the design and/or drawings are property of Humanetics and are being provided by Humanetics to support evaluation and comment related to NHTSA's rulemaking process. Under the proposed rulemaking, design drawings may not be copied or used for any other purposes without the written consent of Humanetics and no license would be granted to any patented designs.

Under the Memorandum of Understanding, for proprietary information used in a final rule issued under part 572, no restrictions will apply to copyrighted design and drawings upon the effective date of the final rule, and all restrictive notices used in a proposal document will be removed in the final rule. Similarly, no restrictions will apply to the patented design upon the effective date of the final rule if the final rule does not specify the use of another design as an alternative to the patented design. Specifically, Humanetics will provide to NHTSA for each applicable patent either a notice of abandonment of that patent to the United States Patent and Trademark Office or a letter stating that that patent will not be enforced against any third-party use. Likewise, if no alternative design is specified, all restrictive notices used in the proposal document associated with the use of the patented design will be removed as part of the publication of the final rule. In that circumstance, Humanetics will provide NHTSA a notice confirming that no restrictions on patented designs will apply.

Based on the comments received to date, NHTSA notes a general preference for a single open-source shoulder design over a single proprietary shoulder or alternative designs. In line with these comments, and subject to the understanding reached with Humanetics, NHTSA has tentatively concluded that it would be preferable if the final rule specifies only the SD-3 shoulder. In addition, specifying only one shoulder design will help make the dummy responses more uniform. NHTSA seeks comment on this tentative conclusion.

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the agency name and the docket number or RIN in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

If you are submitting comments electronically as a PDF (Adobe) file, NHTSA asks that the documents be submitted using the Optical Character Recognition process, thus allowing NHTSA to search and copy certain portions of your submissions.

Please note that pursuant to the Data Quality Act, for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <https://www.transportation.gov/regulations/dot-information-dissemination-quality-guidelines>.

How can I be sure that my comments were received?

If you wish the Docket to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, the Docket will return the postcard by mail.

How do I submit confidential business information?

You should submit a redacted "public version" of your comment (including redacted versions of any additional documents or attachments) to the docket using any of the methods identified under **ADDRESSES**. This "public version" of your comment should contain only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed have been redacted. See below for further instructions on how to do this.

You also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by 49 CFR part 512. Your request must set forth the information specified in part

² See Section VIII of the NPRM.

³ These discussions were a continuation of discussions NHTSA and Humanetics have had over the past several years regarding the use of its proprietary information in NHTSA rulemaking activities.

512. This includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to part 512.8; and a certificate, pursuant to part 512.4(b) and part 512, appendix A.

You are required to submit to the Office of Chief Counsel one unredacted “confidential version” of the information for which you are seeking confidential treatment. Pursuant to part 512.6, the words “ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION” or “CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS” (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: “[].”

You are also required to submit to the Office of Chief Counsel one redacted “public version” of the information for which you are seeking confidential treatment. Pursuant to part 512.5(a)(2), the redacted “public version” should include redactions of any information for which you are seeking confidential treatment (*i.e.*, the only information that should be unredacted is information for which you are not seeking confidential treatment).

NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA’s headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the request to John Piazza at John.Piazza@dot.gov.

Will the Agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that the docket receives after that date. If the docket receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by the docket at the address given above under **ADDRESSES**. The hours of the docket are indicated above in the same location. You may also see the comments on the internet. To read the comments on the internet, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material. You can arrange with the docket to be notified when others file comments in the docket. See www.regulations.gov for more information.

Issued under authority delegated in 49 CFR 1.95 and 501.5.

Sophie Shulman,

Deputy Administrator.

[FR Doc. 2024–14546 Filed 7–8–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

**[Docket No. FWS–R4–ES–2023–0224;
FXES1111090FEDR–245–FF09E21000]**

RIN 1018–BE32

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Barrens Topminnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Barrens topminnow (*Fundulus julisia*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 1.5 acres (0.6 hectares) of spring pool and 11.4 miles (18.3 kilometers) of spring run in Cannon, Coffee, Dekalb, Franklin, Grundy, and Warren Counties, Tennessee, fall within the boundaries of the proposed critical habitat designation. We also announce the availability of an economic analysis of the proposed designation of critical habitat for the Barrens topminnow.

DATES: We will accept comments received or postmarked on or before September 9, 2024. Comments

submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by August 23, 2024.

ADDRESSES:

Written comments: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS–R4–ES–2023–0224, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R4–ES–2023–0224, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file for this critical habitat designation and are available at <https://www.fws.gov/office/tennessee-ecological-services> and at <https://www.regulations.gov> under Docket No. FWS–R4–ES–2023–0224.

FOR FURTHER INFORMATION CONTACT: Daniel Elbert, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Office, 446 Neal Street, Cookeville, TN 38501; telephone 931–528–6481. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Please see Docket No. FWS–R4–ES–2023–0224 on <https://www.regulations.gov> for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:**Executive Summary**

Why we need to publish a rule. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Designation of critical habitat can only be completed by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. We propose the designation of critical habitat for the Barrens topminnow. The Barrens topminnow was listed as an endangered species under the Act on November 20, 2019 (see 84 FR 56131; October 21, 2019).

The basis for our action. Under section 4(a)(3) of the Act, if we determine that a species is an endangered or threatened species we must, to the maximum extent prudent and determinable, designate critical habitat. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary of the Interior (Secretary) that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that we designate critical habitat at the time a species is determined to be an endangered or threatened species, to the maximum extent prudent and determinable. On January 4, 2018, the Service published a proposed rule to list the Barrens topminnow as an endangered species under the Act (83 FR 490). At the time of the proposed listing rule, the Service found that critical habitat was prudent but could not be determined until a careful assessment of the economic impacts that may occur due to a critical habitat designation was completed. The final listing rule (84 FR 56131; October 21, 2019) affirmed that the designation

of critical habitat was prudent but not determinable because specific information needed to analyze the impacts of designation was lacking.

In accordance with section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19, we prepared an analysis of the economic impacts of the proposed critical habitat designation. In this proposed rule, we announce the availability of the draft economic analysis for public review and comment.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270) and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of appropriate specialists regarding our 2017 species status assessment (SSA) report (Service 2017, entire), which informed this proposed rule. In addition to the peer review conducted on the 2017 SSA report, we are seeking comments from independent specialists during the public comment period on this proposed rule (see **DATES**, above). The purpose of peer review is to ensure that our designation is based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in fish biology, habitat, and stressors or factors negatively affecting the species.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Historical and current range, including distribution patterns and the locations of any additional populations of Barrens topminnow.

(2) Specific information on:

(a) The amount and distribution of Barrens topminnow habitat;

(b) Any additional areas occurring within the range of the species, *i.e.*, Cannon, Coffee, Dekalb, Franklin, Grundy, and Warren Counties, Tennessee, that should be included in the designation because they (i) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may

require special management considerations or protection, or (ii) are unoccupied at the time of listing and are essential for the conservation of the species;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) Whether areas not occupied at the time of listing qualify as habitat for the species and are essential for the conservation of the species.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(5) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. Please see *Consideration of Other Relevant Impacts*, below, for information on areas for which the Service's Partners for Fish and Wildlife is developing conservation agreements; if you think we should exclude any of these areas, or any other areas, from the designation of critical habitat for the Barrens topminnow, please provide information supporting a benefit of exclusion.

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(2) of the Act directs that the Secretary

shall designate critical habitat on the basis of the best scientific data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>.

Our final critical habitat designation may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. Our final designation may not include all areas proposed if we determine they do not meet the definition of critical habitat, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion and exclusion will not result in the extinction of the species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On January 4, 2018, we published a proposed rule in the **Federal Register** (83 FR 490) to list the Barrens topminnow as an endangered species under the Act. At the time of our proposal, we determined that designation of critical habitat was prudent but not determinable because specific information needed to analyze the impacts of designation was lacking. We published the final listing rule on October 21, 2019 (84 FR 56131). Please refer to the proposed and final listing rules (83 FR 490, January 4, 2018; 84 FR 56131, October 21, 2019) for a detailed description of previous Federal actions concerning this freshwater fish species.

Background

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species; and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.*, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.*, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population

pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement "reasonable and prudent alternatives" to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied

by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the

prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define “physical or biological features essential to the conservation of the species” as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or absence of a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the

relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of Barrens topminnow from studies of this species' habitat, ecology, and life history as described in the SSA report (Service 2017, entire); January 4, 2018, proposed listing rule (83 FR 490); and October 21, 2019, final listing rule (84 FR 56131). As described in the SSA report and listing rules, Barrens topminnows spawn in filamentous algae near the water surface, between April and August, with peak activity occurring from May to June. While the maximum age of the Barrens topminnow is 4 years, adults typically live for 2 years or less, and only about one-third of individuals spawn more than one season (Rakes 1989, p. 42; Etnier and Starnes 1993, p. 366). Prey items consumed by Barrens topminnows consist predominantly of microcrustaceans and immature aquatic insect larvae. However, the species is a generalist feeder, also consuming small snails and terrestrial organisms such as ants and other insects that fall or wander into aquatic habitats (Rakes 1989, pp. 18–25).

Barrens topminnow habitat is restricted to springhead pools and slow-flowing areas of spring runs on the Barrens Plateau in middle Tennessee. This species is known to have occurred historically at 18 sites, but likely occurred at more sites that were not surveyed prior to topminnow extirpation. These fish are strongly associated with abundant native aquatic vegetation, which they use for cover and as spawning substrate (Service 2017, pp. 7–9). Spawning occurs primarily over clumps of filamentous algae (*Cladophora* and *Pithophora* species). Recently deposited eggs are nearly

colorless and well camouflaged among the many air bubbles generated during photosynthesis and trapped in the algae (Rakes 1989, pp. 29–30). In addition to clumps of algae, plants used by Barrens topminnows for cover include watercress (*Nasturtium officinale*), rushes (*Juncus*), pondweed (*Potamogeton*), and eelgrass (*Valisneria*) (Service 2017, p. 7). Barrens topminnows have only been found in streams where the predominant source of base flow is groundwater. Due to the groundwater influence of these habitats, temperatures are relatively stable, ranging from 15 to 25 degrees Celsius (°C) (59 to 77 degrees Fahrenheit (°F)) (Service, p. 7). Barrens topminnows only occur in and are adapted to surface streams predominantly fed by adjacent groundwater sources and typically are clear during baseflow. In unaltered landscapes, turbidity increases in these streams are temporary, resulting from inputs of sediments and nutrients in runoff following precipitation events. Because Barrens topminnows are adapted to clear groundwater-fed streams, use visual cues such as sunlight and male coloration (Rakes 1989, p. 35) for spawning, and rely in part on eyesight to chase prey (Rakes 1989, p. 18), long periods of elevated turbidity may negatively impact populations.

The primary habitat elements that influence resiliency of the Barrens topminnow include water quality, water persistence, and submerged or overhanging plant cover. We have determined that the following physical or biological features are essential to the conservation of the Barrens topminnow:

- (1) Groundwater-fed, first or second order streams and springs that persist annually;
- (2) Water temperature ranging from 15 to 25 °C (59 to 77 °F);
- (3) Water during base flow with limited turbidity that is sufficiently clear for individuals to see spawning and feeding cues;
- (4) Submerged native aquatic plants, such as *Cladophora* and *Pithophora* species, watercress (*Nasturtium officinale*), rushes (*Juncus* spp.), pondweed (*Potamogeton* spp.), and eelgrass (*Vallisneria* spp.), or overhanging terrestrial plants and submerged plant roots, to provide cover and surfaces for spawning; and
- (5) A prey base of microcrustaceans and small aquatic insects such as chironomids (midges).

Special Management Considerations

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the

species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the Barrens topminnow may require special management considerations or protection to reduce the following threats: (1) Landscape conversion, including (but not limited to) urban, commercial, and agricultural use, and infrastructure (roads, bridges, utilities); (2) urban and agricultural water uses (water supply reservoirs, wastewater treatment, etc.); (3) significant alteration of water quality; (4) impacts from invasive species; and (5) changes and shifts in seasonal precipitation patterns as a result of climate change.

Management activities that could help ameliorate these threats include, but are not limited to, the following: (1) Use of best management practices to limit or reduce sedimentation (suspended sediment influxes), such as those provided in the Tennessee Department of Environment and Conservation (TDEC) Erosion and Sediment Control Handbook (TDEC 2012, entire); (2) retention of natural barriers, and maintenance or construction of barriers that isolate Barrens topminnows from invasive mosquitofish; and (3) installation of wells to provide a groundwater source of surface water at drought-sensitive sites.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are proposing to designate critical habitat in areas within the geographical area occupied by the species at the time of listing. We also are proposing to designate one specific area outside the geographical area occupied by the species because we have determined that the area is essential for the conservation of the species (see *Areas Outside the Geographic Area Occupied at the Time of Listing*, below).

The Barrens topminnow has a naturally limited range, and its current distribution is much reduced from its historical distribution. Meeting the conservation and recovery needs of the

species will require continued protection of existing populations and habitat, as well as management to ensure there are adequate numbers of individuals in stable populations at sites in native watersheds where mosquitofish are, or can be, excluded. This approach will reduce the likelihood that catastrophic events, such as extreme droughts or introduction/invasion of mosquitofish at an occupied site, do not simultaneously affect all known populations to the same extent. In addition, rangewide recovery considerations, such as maintaining existing genetic diversity and striving for representation of all major portions of the species' current range, were considered in formulating this proposed critical habitat designation.

Areas Occupied at the Time of Listing

We identified all spring pools (pond-like, with little or no flow) and spring runs (groundwater-fed, flowing surface water) that supported populations of the Barrens topminnow at the time of listing. Rangewide sampling undertaken at 37 spring sites since 2013 (Tennessee Aquarium Conservation Institute (TNACI) 2014, p. 11; TNACI 2017, p. 3) verified the current occurrence of Barrens topminnow at six sites (Service 2017, p. 12): Benedict Spring, Big Spring (Merkle), McMahan Creek, Marcum Spring, Short Spring, and Greenbrook Pond. The species has been shown in intermittent surveys over several decades to persist at these sites.

In 2023, a population of Barrens topminnow was discovered in Pepper Hollow Branch, Grundy County, Tennessee. At the time of listing in 2019, Barrens topminnows were not known to occupy Pepper Hollow Branch. This stream is at the eastern edge of the Barrens Plateau and has not been well surveyed. Given this stream's proximity to the previously known range of the Barrens topminnow and, until recently, scarcity of reported fish surveys, it is very likely the newly discovered population is native and was not introduced after the time of listing. As such, there is little uncertainty that Barrens topminnows were present in Pepper Hollow Branch at the time of listing, and we include the stream in our proposed critical habitat designation. Mosquitofish are not present in Pepper Hollow Branch, although no barriers to potential mosquitofish incursions have been observed. This area also increases the species' viability, which is essential for the conservation of the Barrens topminnow. All five physical or biological features essential to the conservation of the species are present in Pepper Hollow Branch.

One occupied site, Greenbrook Pond, contains an introduced population (present at the time of listing) outside the historical range of the species, but within the middle portion of the Caney Fork River watershed, the upper portions of which are in the species' historical range. All sites occupied at the time of listing (Benedict Spring, Big Spring (Merkle), McMahan Creek, Marcum Spring, Short Spring, Greenbrook Pond, and Pepper Hollow Branch) currently have all five essential physical or biological features for Barrens topminnow populations. Importantly, all occupied sites except Big Spring (Merkle) are currently free of mosquitofish, and five of the six sites without mosquitofish have a barrier to mosquitofish invasion. Barrens topminnows were thought to be potentially extirpated from Big Spring (Merkle) but were re-documented at this site on February 16, 2018 (captured and released on February 15, 2018) (Neely 2018, pers. comm.). Although Big Spring (Merkle) is not free of mosquitofish and lacks a barrier to further mosquitofish invasion, topminnows in the spring appear to outnumber mosquitofish.

Areas Outside the Geographic Area Occupied at the Time of Listing

We are proposing to designate one area outside the geographical area occupied at the time of listing by the species, Vervilla Spring because the area is essential for the conservation of the Barrens topminnow. Although it is not currently occupied, Vervilla Spring is within the Caney Fork River watershed where native populations of the Barrens topminnow occur. Vervilla Spring is on the Tennessee National Wildlife Refuge and sustained a population of introduced Caney Fork watershed Barrens topminnows from 2001 until 2011. However, the population succumbed to mosquitofish that, during a flood, circumvented a constructed barrier. It is feasible to remove all

mosquitofish and rebuild the barrier so that it is more robust. With a strong barrier to mosquitofish in place, restocking can occur, establishing a new population. Reestablishing the population would increase Barrens topminnow redundancy, resiliency, and viability, promoting conservation and increasing the likelihood species recovery. Without the habitat provided by the unoccupied area, species recovery and conservation are less likely to be attained. All five physical or biological features essential to Barrens topminnow conservation are present in Vervilla Spring, which is habitat for the species because it provides adequate cover from predation, food resources, substrate (aquatic vegetation) for successful spawning and recruitment, and water quality that meets the species' physiological needs. The upper ends of all proposed critical habitat units are demarcated by the place where surface water emerges from the ground to form the head of the spring, or where permanent flow begins, which is approximately the location of the upstream-most record of Barrens topminnow in each proposed unit. Except for Big Spring (Merkle) and Pepper Hollow Branch, the downstream ends of the proposed units are demarcated by a barrier to mosquitofish. The downstream ends of critical habitat at Big Spring (Merkle) and Pepper Hollow Branch are approximately the location of the downstream-most record of Barrens topminnow.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the essential physical or biological features. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands

inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. All proposed units contain all of the identified physical or biological features and support multiple life-history processes. We will make the coordinates or plot points or both on which each map is based available to the public on <https://www.regulations.gov> at Docket No. FWS-R4-ES-2023-0224, on our internet site (<https://www.fws.gov/office/tennessee-ecological-services>), and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

Proposed Critical Habitat Designation

We propose to designate approximately 1.5 acres (ac) (0.6 hectares (ha)) of spring pool and 11.4 miles (mi) (18.3 kilometers (km)) of spring run in eight units as critical habitat for the Barrens topminnow. The table below shows the name, land ownership of the riparian areas surrounding the units, and surface area (for spring pools) or length (for stream runs) of the proposed units. Ownership of spring run and spring pool bottoms is determined by the adjacent riparian land ownership. These riparian areas are not part of the proposed critical habitat designation.

TABLE OF PROPOSED CRITICAL HABITAT UNIT OCCUPANCY STATUS, LAND OWNERSHIP, AND SIZE

Critical habitat unit	Occupied at time of listing?	Land ownership by type	Length or area of unit in miles (kilometers) or acres (hectares)
1. McMahan Creek	Yes	Private	0.8 mi (1.3 km).
2. Benedict Spring	Yes	Private	0.1 ac (0.04 ha).
3. Short Spring	Yes	City of Tullahoma	1.0 ac (0.4 ha).
4. Vervilla Spring	No	Federal	0.2 mi (0.3 km).
5. Marcum Spring	Yes	Private	0.6 mi (0.9 km).
6. Greenbrook Pond	Yes	City of Smithville	0.1 mi (0.16 km); 0.4 ac (0.16 ha).
7. Big Spring (Merkle)	Yes	Private	0.5 mi (0.85 km).
8. Pepper Hollow Branch	Yes	Private	9.2 mi (14.8 km).
Total pool area .....	.....	.....	1.5 ac (0.6 ha).
Total stream length .....	.....	.....	11.4 mi (18.3 km).

* Note: Area sizes may not sum due to rounding.

We present brief descriptions of the proposed units, and reasons why they meet the definition of critical habitat for Barrens topminnow, below.

Unit 1: McMahan Creek

Unit 1, a spring run, consists of 0.8 mi (1.3 km) of McMahan Creek in Cannon County. The upstream end of the unit is at the confluence of the source spring run (unnamed) and McMahan Creek, just north of the Woodland Estates subdivision. The downstream end is to the south, where McMahan Creek goes under Geedsville Road. This unit was occupied at the time of listing and is currently occupied by the Barrens topminnow. In addition, the unit currently supports all breeding, feeding, and sheltering needs for the species and contains all of the physical or biological features essential to the conservation of the Barrens topminnow. The riparian land adjacent to the unit is privately owned.

Special management considerations or protection may be required to address sediment washing into the creek from adjacent pasture and residential areas. Fencing would reduce the likelihood of livestock trampling instream vegetation, although adjacent lands are used for grazing only intermittently. A concrete box culvert at the Geedsville Road crossing at the downstream end of the unit is a barrier to mosquitofish. Any future roadway maintenance or construction at the crossing would require leaving the culvert intact or, in the case of culvert replacement or modification, ensuring an alternative barrier persists to prevent mosquitofish invasion.

Unit 2: Benedict Spring

Unit 2 is a 0.1-ac (0.04-ha) spring pool in Coffee County, just north of Highway 55, between Summitville Road to the west and Summit Breeze Lane to the east. This unit was occupied at the time of listing and is currently occupied by the Barrens topminnow. In addition, the unit currently supports all breeding, feeding, and sheltering needs for the species and contains all of the physical or biological features essential to the conservation of the Barrens topminnow. The riparian land adjacent to the unit is privately owned.

Special management considerations or protection may be required to address drying of the spring pond. In 2006, 2007, 2008, 2010, and 2016, the spring became almost completely dry, and topminnows had to be rescued (TNACI 2014, p. 11; Service 2017, p. 20). They were returned to the spring on each occasion, after drought subsided. Installation of a well with a pump,

employed during droughts, would prevent the need to rescue topminnows. Assurance of a constant water supply to the spring pool during drought would reduce stress on the topminnow population in proposed Unit 2, which otherwise will continue to endure frequent periods of drought-induced stress due to elevated temperature, lowered dissolved oxygen, enhanced depredation, and handling necessary for rescue efforts.

Unit 3: Short Spring

Unit 3 is a 1.0-ac (0.4-ha) spring pool in the city of Tullahoma, in Coffee County, just west of Short Springs Road and just north of the Short Springs Natural Area. The spring pool is formed by a concrete dam and feeds a short, approximately 0.1-mile (0.16-km) spring run that feeds Bobo Creek. The city owns the unit, and the natural area is State-owned. This unit was occupied at the time of listing and is currently occupied by the Barrens topminnow. In addition, the unit currently supports all breeding, feeding, and sheltering needs for the species and contains all of the physical or biological features essential to the conservation of the Barrens topminnow.

Special management considerations may be required for Unit 3. For example, controlling access to the unit for fishing may reduce the likelihood of introductions of bait bucket species, including mosquitofish, that can compete with or prey upon topminnows.

Unit 4: Vervilla Spring

Unit 4, in Warren County, is a 0.2-mile (0.3-km) reach consisting of a series of spring pools and intervening spring run, with its downstream end at the Hickory Creek Confluence, just upstream of the confluence of Hickory Creek and West Fork Hickory Creek. The unit is entirely within a parcel of the Tennessee National Wildlife Refuge, owned and managed by the U.S. Fish and Wildlife Service. This unit was historically occupied but is currently unoccupied by the Barrens topminnow, and it is essential for the conservation of the species. Adding a population of Barrens topminnow to this unoccupied unit, after raising the level of the dam and removing mosquitofish, would increase the species' resiliency and redundancy as is necessary for the conservation and recovery of the species, and reduce the species' likelihood of extinction. In addition, this unit is habitat for the species; it contains all five physical or biological features essential to the conservation of the species.

Unit 5: Marcum Spring

Unit 5, in Coffee County, consists of an isolated spring pool and 0.6 mile (0.9 km) of intervening spring run and natural spring pool habitat that terminates in a small pond formed by a constructed impoundment. The downstream end of the unit (the impounded pool) is at Ovoca Road, where it empties to Ovoca Lake, a small-constructed impoundment on Carroll Creek. This unit was occupied at the time of listing and is currently occupied by the Barrens topminnow. In addition, the unit currently supports all breeding, feeding, and sheltering needs for the species and contains all of the physical or biological features essential to the conservation of the Barrens topminnow. The riparian land adjacent to the unit is privately owned.

Special management considerations or protection may be required to address sediment washing into the spring from adjacent pasture and to address filling portions of the spring for off-road heavy machinery access, which has happened before (TNACI 2014, p. 15). In addition, maintaining existing fencing at the site would continue to keep livestock out of the stream.

Unit 6: Greenbrook Pond

Unit 6 consists of a 0.4-ac (0.16-ha) pond, which is an impounded spring pool, and 0.1 mi (0.16 km) of spring run at the pond outflow, in Greenbrook Park, in the city of Smithville, Dekalb County. This unit was occupied at the time of listing and is currently occupied by the Barrens topminnow. In addition, the unit currently supports all breeding, feeding, and sheltering needs for the species and contains all of the physical or biological features essential to the conservation of the Barrens topminnow. The riparian land adjacent to the unit is owned by the city of Smithville.

Special management considerations may be required for Unit 6. Because the unit is in a public park, access to the unit for collecting bait fish may need to be controlled, to reduce the likelihood of capturing topminnows or of releasing unused bait fish, including mosquitofish, that can compete with or prey upon topminnows.

Unit 7: Big Spring (Merkle)

Unit 7, in Franklin County, consists of a springhead and approximately 0.5 mi (0.85 km) of spring run. The spring is marked as Big Spring on topographic maps but is also referred to by the last name of the landowner at the spring head, Merkle. The unit lies on two private property parcels and is adjacent to a county road right-of-way.

The spring flows out of a springhead at the base of a hill and through fields used for row-crop agriculture. The stretch upstream of Georgia Crossing Road is surrounded by a row-crop field. Below Georgia Crossing Road, there is more riparian vegetation, and the stream runs adjacent to Hawkins Cove Road. Unit 7 terminates at the confluence with Miller Creek.

This unit was occupied at the time of listing and is currently occupied by the Barrens topminnow. In addition, the unit currently supports all breeding, feeding, and sheltering needs for the species and contains all of the physical or biological features essential to the conservation of the Barrens topminnow. Special management considerations may be required for streambank and riparian area conservation projects that may occur in Unit 7 in the future. The spring run has mostly been channelized and the banks cleared of vegetation. Portions of the spring run are occasionally dammed by beavers, creating more slackwater habitat and promoting aquatic vegetation growth.

Unit 8: Pepper Hollow Branch

Unit 8 consists of 9.2 mi (14.8 km) of Pepper Hollow Branch and its permanent tributary reaches upstream of the confluence with the Collins River, in Grundy County, Tennessee. The upstream end of the unit starts on mainstem Pepper Hollow Branch on the Cumberland Plateau, in a pine plantation, from which the stream flows into and through hardwood forest until it reaches the valley floor. Areas adjacent to Pepper Hollow Branch in the valley are used for nursery production. The unnamed tributaries feeding Pepper Hollow Branch are shaded and have a mix of riffles and pools with some aquatic vegetation along their margins. Tarlton Spring Run, the downstream-most tributary, contains abundant aquatic vegetation and flows through open fields in the valley. The riparian land adjacent to the unit consists of several privately owned parcels.

This unit is currently occupied by the Barrens topminnow but had not been surveyed and was not known to be occupied at the time of listing. This unit is essential for the conservation of the species, as this newly discovered population increases the species' resiliency and redundancy as is necessary for conservation and recovery of the species, and reduces the species' likelihood of extinction. In addition, this unit contains all five physical or biological features essential to the conservation of the species.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species (50 CFR 402.02).

Compliance with the requirements of section 7(a)(2) of the Act is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during formal consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs

associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinstate consultation. Reinitiation of consultation is required and shall be requested by the Federal agency, where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (1) If the amount or extent of taking specified in the incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action. As provided in 50 CFR 402.16, the requirement to reinstate consultations for new species listings or critical habitat designation does not apply to certain agency actions (e.g., land management plans issued by the Bureau of Land Management in certain circumstances).

Destruction or Adverse Modification of Critical Habitat

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires that our **Federal Register** notices "shall, to the maximum extent practicable also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify [critical] habitat, or may be affected by such designation." Activities that may be affected by designation of critical habitat for the Barrens topminnow include those that may affect the physical or biological features of the Barrens topminnow's critical habitat (see Physical or Biological Features Essential to the Conservation of the Species).

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. No DoD lands with a completed INRMP are within the proposed critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the “2016 Policy”); 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor’s opinion entitled, “The Secretary’s Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act” (M–37016).

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to

use and how much weight to give to any factor. In our final rules, we explain any decision to exclude areas, as well as decisions not to exclude, to make clear the rational basis for our decision. We describe below the process that we use for taking into consideration each category of impacts and any initial analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.”

The “without critical habitat” scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). Therefore, the baseline represents the costs of all efforts attributable to the listing of the species under the Act (i.e., conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

Executive Order (E.O.) 14094 supplements and reaffirms E.O. 12866 and E.O. 13563 and directs Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. Section 3(f) of E.O. 12866 identifies four criteria when a regulation is considered a “significant regulatory action” and requires additional analysis, review, and approval if met. The criterion relevant here is whether the designation of critical habitat may have an economic effect of \$200 million or more in any given year (section 3(f)(1) as amended by E.O. 14094). Therefore, our consideration of economic impacts uses a screening analysis to assess whether a designation of critical habitat for the Barrens topminnow is likely to exceed the economically significant threshold.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Barrens topminnow (IEC 2023, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographical areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable

incremental economic impacts as a result of the designation.

The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas is also likely to jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes little if any incremental impacts above and beyond the impacts of listing the species. As a result, we generally focus the screening analysis on areas of unoccupied critical habitat (unoccupied units or unoccupied areas within occupied units). Overall, the screening analysis assesses whether designation of critical habitat is likely to result in any additional management or conservation efforts that may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our draft economic analysis (DEA) of the proposed critical habitat designation for the Barrens topminnow; our DEA is summarized in the narrative below.

As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Barrens topminnow, first we identified, in the IEM dated October 19, 2022, probable incremental economic impacts associated with the following categories of activities: (1) bridge or highway construction and maintenance; (2) development and maintenance of utilities (e.g., pipelines); (3) agriculture; (4) water quality permitting; and (5) stream restoration. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. The species was listed as endangered on November 20, 2019 (see 84 FR 56131; October 21, 2019). Therefore, in areas where the Barrens topminnow is present, under section 7 of the Act, Federal agencies are required to consult with the Service on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, our consultations would include an evaluation of measures to avoid the

destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that result from the species being listed and those that would be attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for the Barrens topminnow's critical habitat. The following specific circumstances help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would likely adversely affect the essential physical or biological features of occupied critical habitat are also likely to adversely affect the species itself. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation.

The proposed critical habitat designation for the Barrens topminnow totals approximately 1.5 ac (0.6 ha) of spring pool and 11.4 mi (18.3 km) of spring run, which includes both occupied and unoccupied habitat. Within the currently occupied springs (proposed Units 1, 2, 3, 5, 6, 7, and 8), any actions that may affect the species would likely also affect proposed critical habitat and it is unlikely that any additional conservation efforts would be required to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the species. Thus, incremental project modifications resulting solely from the presence of occupied critical habitat are not anticipated. In total, approximately 21 section 7 consultations are anticipated to occur over the next 10 years in the occupied units, with total costs to the Service and action agencies of \$75,800, or approximately \$7,600 per year.

Within the unoccupied Verrilla Spring (proposed Unit 4), any future projects that may affect the Barrens topminnow or its critical habitat would result in section 7 consultation because the spring is on federally managed land. It is not clear that substantial project modifications to proposed Unit 4 would be required to accommodate critical habitat over and above what would already be anticipated to occur under the baseline. With or without critical habitat, this area will be managed for

Barrens topminnow conservation because the Service plans to reintroduce Barrens topminnow into this area. In other words, raising the height of the mosquitofish exclusion barrier and rehabilitating the unoccupied unit would have been completed to promote species recovery by improving the habitat prior to occupation by the Barrens topminnow regardless of a critical habitat designation. Nevertheless, the screening analysis assumed that raising the height of the mosquitofish barrier and rehabilitating unoccupied proposed Unit 4 is an incremental cost due to the designation of critical habitat. The Service estimates the one-time cost of barrier replacement at \$12,500. In addition to barrier replacement, according to the IEM, one new formal section 7 consultation considering only adverse modification is anticipated to occur in proposed Unit 4 during the next 10 years, at a cost of \$17,000. One informal consultation, with estimated administrative costs of \$8,000, is also anticipated for proposed Unit 4. Therefore, the total incremental cost for proposed Unit 4 is estimated at \$37,500 during the next 10 years, or approximately \$3,800 per year. The total incremental cost for all eight units is estimated at less than \$76,000 over the next 10 years, or \$7,600 per year. These costs would not reach the threshold of "significant" under E.O. 12866.

As noted above, in proposed Unit 8, which is occupied but was not known to be occupied at the time of listing, any actions that may affect the species would likely also affect proposed critical habitat, and it is unlikely that any additional conservation efforts would be required to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the species.

We are soliciting data and comments from the public on the DEA discussed above. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) of the Act, our implementing regulations at 50 CFR 424.19, and the 2016 Policy. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (e.g., a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of “critical habitat.” However, we must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i) because section 4(b)(2) requires us to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or

waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Barrens topminnow are not owned or managed by the DoD or DHS, and, therefore, we anticipate no impact on national security or homeland security.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as safe harbor agreements (SHAs), candidate conservation agreements with assurances (CCAAs) or “conservation benefit agreement” or “conservation agreement” (CBAs) (CBAs are a new type of agreement replacing SHAs and CCAAs in use after April 2024 (89 FR 26070; April 12, 2024)) or HCPs, or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

In preparing this proposal, we have determined that no HCPs or other management plans for the Barrens topminnow currently exist, and the proposed designation does not include any Tribal lands or trust resources or any lands for which designation would have any economic or national-security impacts. Therefore, we anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation, and thus, as described above, we are not considering excluding any particular areas on the basis of the presence of established conservation

agreements or impacts to trust resources.

When analyzing other relevant impacts of including a particular area in a designation of critical habitat, we weigh those impacts relative to the conservation value of the particular area. To determine the conservation value of designating a particular area, we consider a number of factors, including, but not limited to, the additional regulatory benefits that the area would receive due to the protection from destruction or adverse modification as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

The Service’s Partners for Fish and Wildlife (PFW) program is developing conservation agreements with landowners at Benedict Spring and Greenbrook Pond, proposed Units 2 and 6, respectively. At Benedict Spring, a well would be developed and a pump installed to maintain a water supply that would keep the spring full during periods of drought to conserve the Barrens topminnow. Lands adjacent to the spring pool and spring run constituting the proposed Greenbrook Pond Unit would continue to be managed as a city park, under which the population of topminnows has persisted in high numbers. Therefore, as indicated in Information Requested, we are requesting information on whether the benefits of excluding any areas where PFW conservation agreements are developed may outweigh inclusion under section 4(b)(2) of the Act, and the Secretary may exclude these areas from the final designation of critical habitat for the Barrens topminnow.

If through the public comment period we receive information that we determine indicates that there are potential economic, national security, or other relevant impacts from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will evaluate that information and may

conduct a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19. If we receive a request for exclusion of a particular area and after evaluation of supporting information we do not exclude, we will fully describe our decision in the final rule for this action.

Correction

In this proposed rule, we include a correction to the final listing rule's citation in the entry for the Barrens topminnow in the List of Endangered and Threatened Wildlife (List) at 50 CFR 17.11(h). When the final listing rule published (84 FR 56131; October 21, 2019), in the "Listing citations and applicable rules" column of the List, the wrong volume number was included in the citation for the Barrens topminnow's listing rule. We reflect the corrected information under Proposed Regulation Promulgation, below. As explained at 50 CFR 17.11(f), the "Listing citations and applicable rules" column of the List is nonregulatory in nature and is provided for informational and navigational purposes only.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866, 13563, and 14094)

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis

should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and

heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, this critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final as proposed, the critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare statements of energy effects “to the extent permitted by law” when undertaking actions identified as significant energy actions. E.O. 13211 defines a “significant energy action” as an action that (i) is a significant regulatory action under E.O. 12866 (or any successor order, including most recently E.O. 14094); and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy. In our economic analysis, we did not find that this proposed critical habitat designation would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and there is no requirement to prepare a statement of energy effects for this action.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following findings:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or Tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care,

Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions are not likely to destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this proposed rule would significantly or uniquely affect small governments. One of the proposed critical habitat units is on federally owned land and five units are on private land, and thus these six units are not on property belonging to small governments. Two of the eight proposed units are on city property, but one is within a city park, while the other is within city boundaries and abuts a State natural area. Additionally, all proposed units are groundwater-fed pools or streams that are not suitable for development of buildings or housing.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Barrens topminnow in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the

designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for the Barrens topminnow, and it concludes that, if adopted as proposed, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, the appropriate State resource agency in Tennessee. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the State, or on the relationship between the national government and the State, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required.

While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the elements of physical or biological features essential to the conservation of the species. The proposed areas of designated critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations. In a line of cases starting with *Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), the courts have upheld this position.

Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), E.O. 13175 (Consultation and Coordination With Indian Tribal Governments), the President’s memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation; 87 FR 74479, December 5, 2022), and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretary’s Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. As discussed earlier in this document, we have determined that no Tribal lands

would be affected by this proposed critical habitat designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> under Docket No. FWS–R4–ES–2023–0224 and upon request from the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the U.S. Fish and Wildlife Service Species Assessment Team and Tennessee Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

- 1. The authority citation for part 17 continues to read as follows:
- Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.
- 2. In § 17.11, amend paragraph (h) by revising the entry for “Topminnow, Barrens” in the List of Endangered and Threatened Wildlife under FISHES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* * * * *				
FISHES				
* * * * *				
Topminnow, Barrens	<i>Fundulus julisia</i>	Wherever found	E	84 FR 56131, 10/21/2019; 50 CFR 17.95(e).CH
* * * * *				

- 3. In § 17.95, amend paragraph (e) by adding an entry for “Barrens Topminnow (*Fundulus julisia*)” immediately following the entry for “Spring Pygmy Sunfish (*Elassoma alabamae*)” to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes*.

* * * * *

Barrens Topminnow (*Fundulus julisia*)

(1) Critical habitat units are depicted for Cannon, Coffee, Dekalb, Franklin, Grundy, and Warren Counties, Tennessee, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the Barrens topminnow consist of the following components:

(i) Groundwater-fed, first or second order streams and springs that persist annually;

(ii) Water temperature ranging from 15 to 25 degrees Celsius (°C) (59 to 77 degrees Fahrenheit (°F));

(iii) Water during base flow with limited turbidity that is sufficiently clear for individuals to see spawning and feeding cues;

(iv) Submerged native aquatic plants, such as *Cladophora* and *Pithophora* species, watercress (*Nasturtium officinale*), rushes (*Juncus* spp.), pondweed (*Potamogeton* spp.), and eelgrass (*Vallisneria* spp.), or

overhanging terrestrial plants and submerged plant roots, to provide cover and surfaces for spawning; and

(v) A prey base of microcrustaceans and small aquatic insects such as chironomids (midges).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF FINAL RULE].

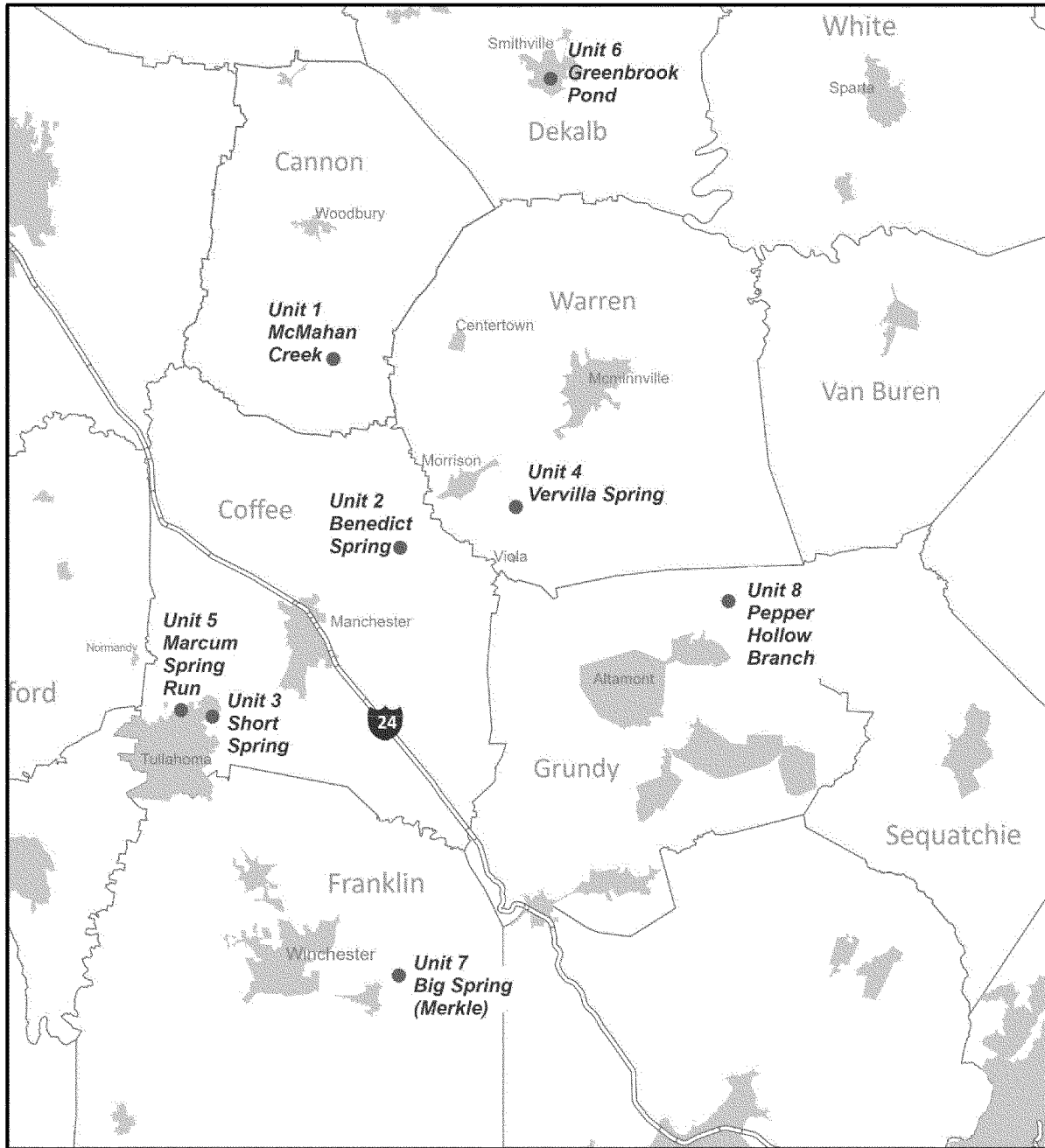
(4) Data layers defining map units were created using Universal Transverse Mercator (UTM) Zone 16N coordinates. The hydrologic data used in the maps were extracted from U.S. Geological Survey National Hydrography Dataset High Resolution (1:24,000 scale) using

Geographic Coordinate System North American 1983 coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at <https://www.regulations.gov> under Docket No. FWS-R4-ES-2023-0224 and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows: Figure 1 to Barrens Topminnow (*Fundulus julisia*) paragraph (5)

BILLING CODE 4333-15-P

Barrens Topminnow (*Fundulus julisia*) Critical Habitat Index Map



Map Location



● Critical Habitat

City Limits

0 5 10 15 Miles

0 5 10 15 Kilometers

(6) Unit 1: McMahan Creek; Cannon County, Tennessee.

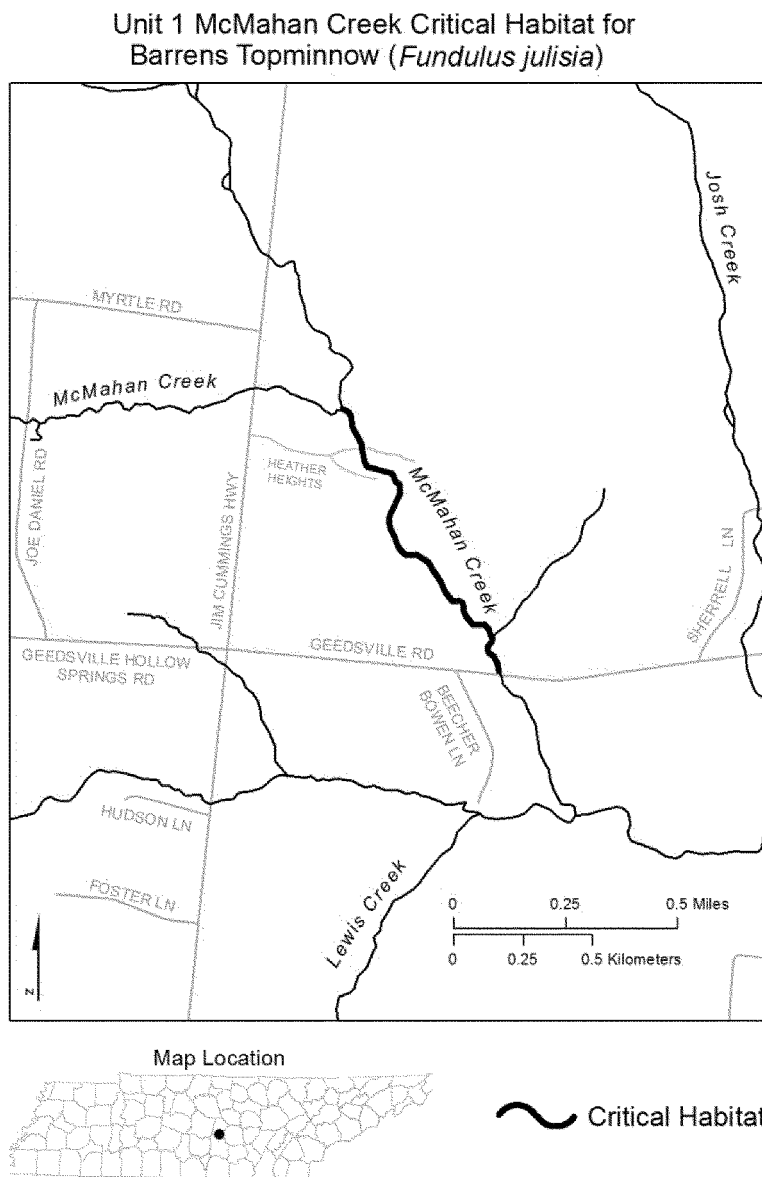
(i) Unit 1 consists of approximately 0.8 mile (mi) (1.3 kilometers (km)) of

McMahan Creek from the mouth of the unnamed perennial spring run upstream of the Woodland Estates subdivision (35.7157°, -86.0542°), down to the

bridge at Geedsville Road (35.7072°, -86.0480°), in Cannon County, Tennessee.

(ii) Map of Unit 1 follows:

Figure 2 to Barrens Topminnow
(*Fundulus julisia*) paragraph (6)(ii)



(7) Unit 2: Benedict Spring; Coffee County, Tennessee.

(i) Unit 2 consists of an approximately 0.1-acre (ac) (0.04-hectare (ha)) pond fed

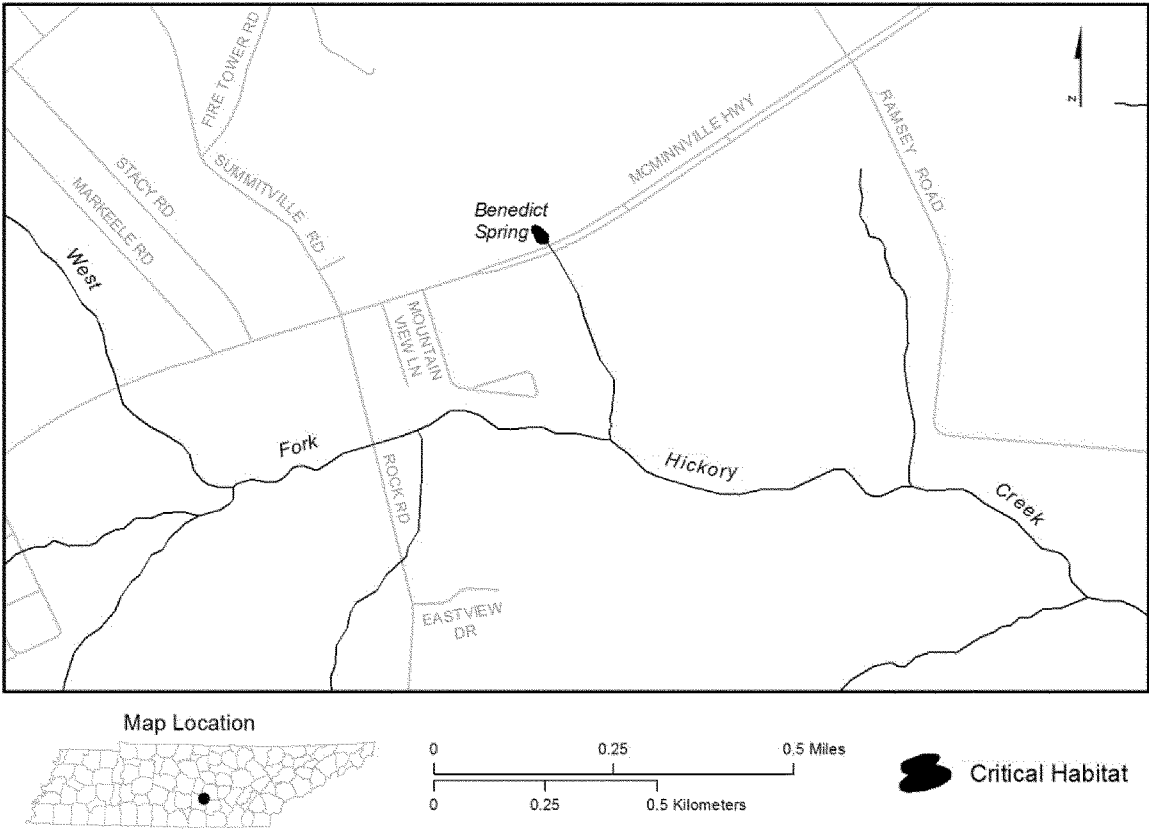
by a spring flowing out of a small cave, on a site (35.5497, -85.9836) approximately 0.2 mi (0.3 km) west-

southwest of the Summitville Post Office.

(ii) Map of Unit 2 follows:

Figure 3 to Barrens Topminnow
(*Fundulus julisia*) paragraph (7)(ii)

Unit 2 Benedict Spring (Type Locality) Critical Habitat for Barrens Topminnow (*Fundulus julisia*)



(8) Unit 3: Short Spring; Coffee County, Tennessee.

(i) Unit 3 consists of a 1.0-ac (0.4-ha) impounded spring (35.4045°, – 86.1781°) in Tullahoma, in Coffee County, Tennessee.

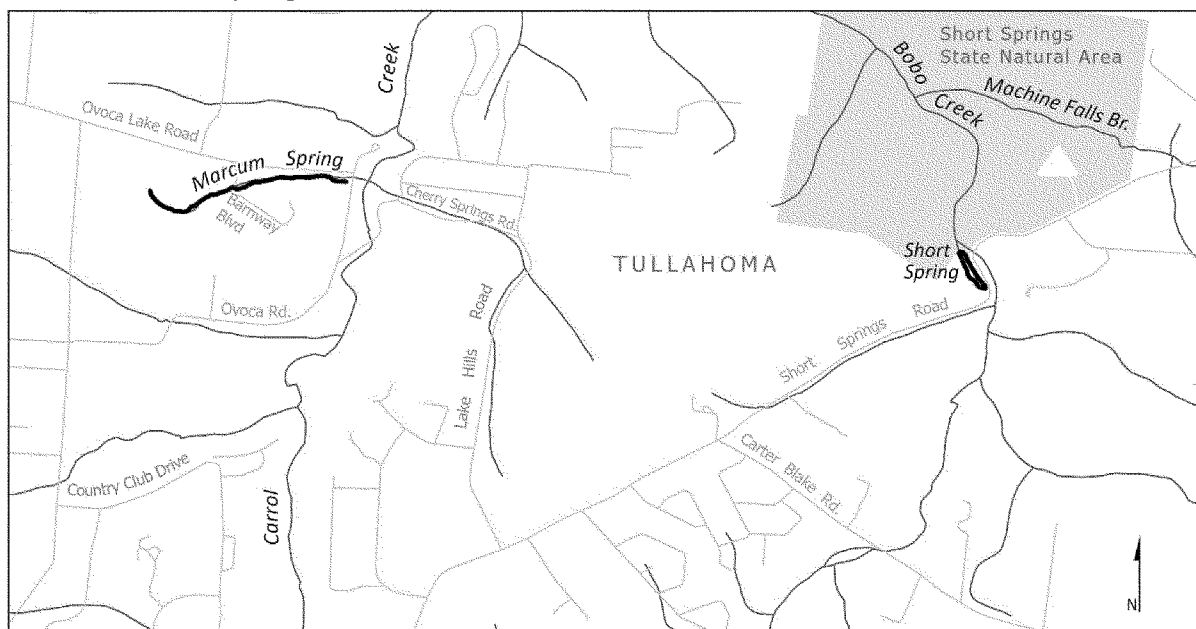
(ii) Map of Unit 3 and Unit 5 follows:

Figure 4 to Barrens Topminnow
(*Fundulus julisia*) paragraph (8)(ii)

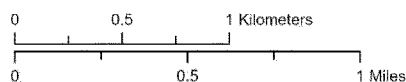
Critical Habitat for Barrens Topminnow (*Fundulus julisia*)

Unit 3, Short Spring

Unit 5, Marcum Spring



Map Location



~ Critical Habitat

(9) Unit 4: Vervilla Spring; Warren County, Tennessee.

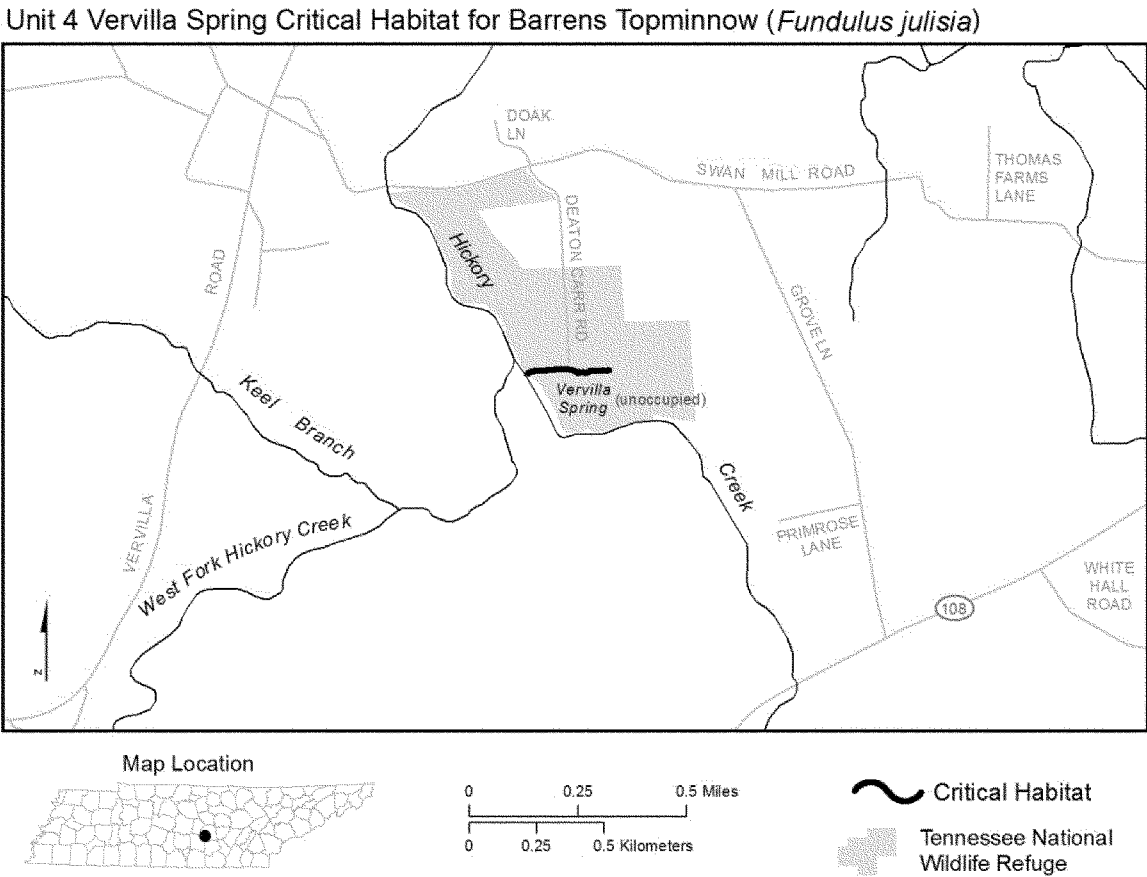
(i) Unit 4 is an approximately 0.2-mi (0.3-km) spring run located on an

outparcel of the Tennessee National Wildlife Refuge, owned and managed by U.S. Fish and Wildlife Service, near the community of Vervilla. The unit

extends from the source of the spring run (35.5870°, -85.8575°) down to its mouth on Hickory Creek.

(ii) Map of Unit 4 follows:

Figure 5 to Barrens Topminnow
(*Fundulus julisia*) paragraph (9)(ii)



- (10) Unit 5: Marcum Spring; Coffee County, Tennessee.

(i) Unit 5 is an approximately 0.6-mi (0.9-km) spring run, including adjacent disconnected spring pools, that flows into Ovoca Lake near Tullahoma, in Coffee County, Tennessee. Unit 5
- (35.4090°, – 86.2052°) runs from the source to the upper end of a pond just above the outlet into Ovoca Lake.

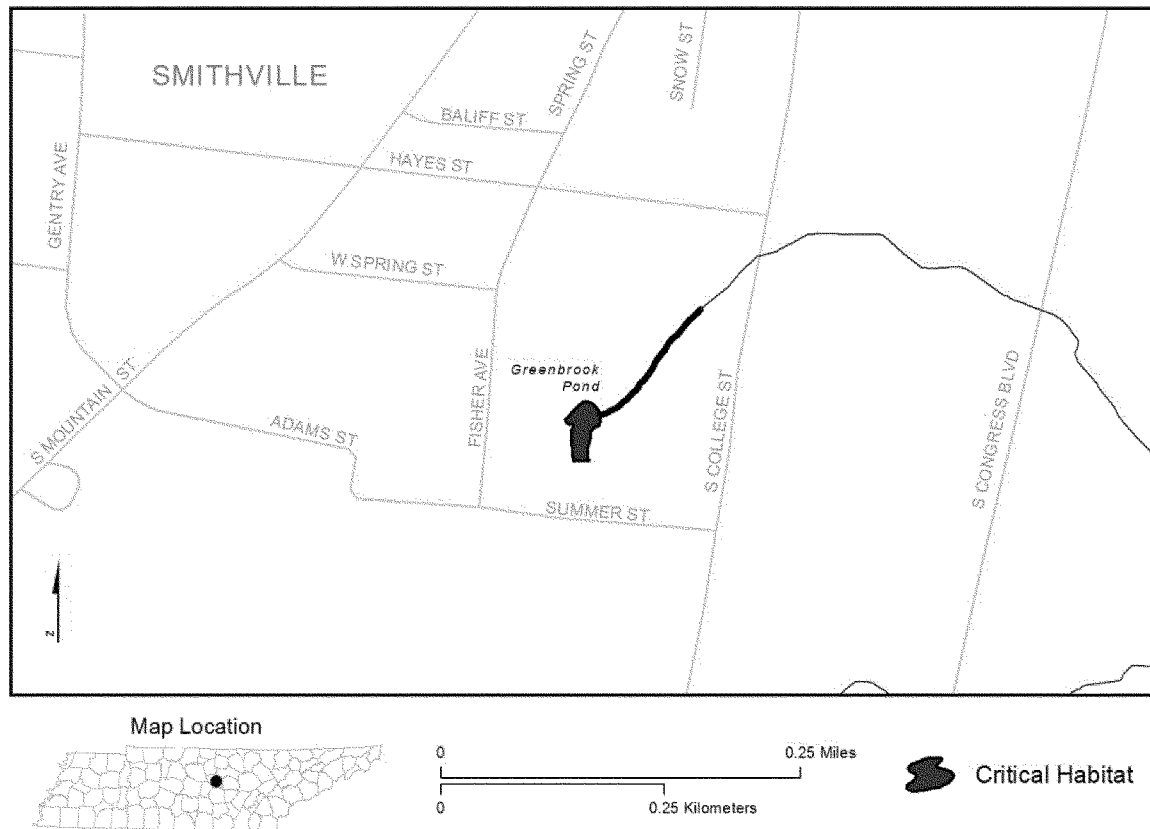
(ii) Map of Unit 5 is provided at paragraph (8)(ii) of this entry.

(11) Unit 6: Greenbrook Pond; Dekalb County, Tennessee.
- (i) Unit 6 is an approximately 0.4-ac (0.16-ha) pond and 0.1-mi (0.16-km) spring run flowing from the pond, in Greenbrook Park, in the city of Smithville.

(ii) Map of Unit 6 follows:

Figure 6 to Barrens Topminnow
(*Fundulus julisia*) paragraph (11)(ii)

Unit 6 Greenbrook Pond Critical Habitat for Barrens Topminnow (*Fundulus julisia*)



(12) Unit 7: Big Spring (Merkle); Franklin County, Tennessee.

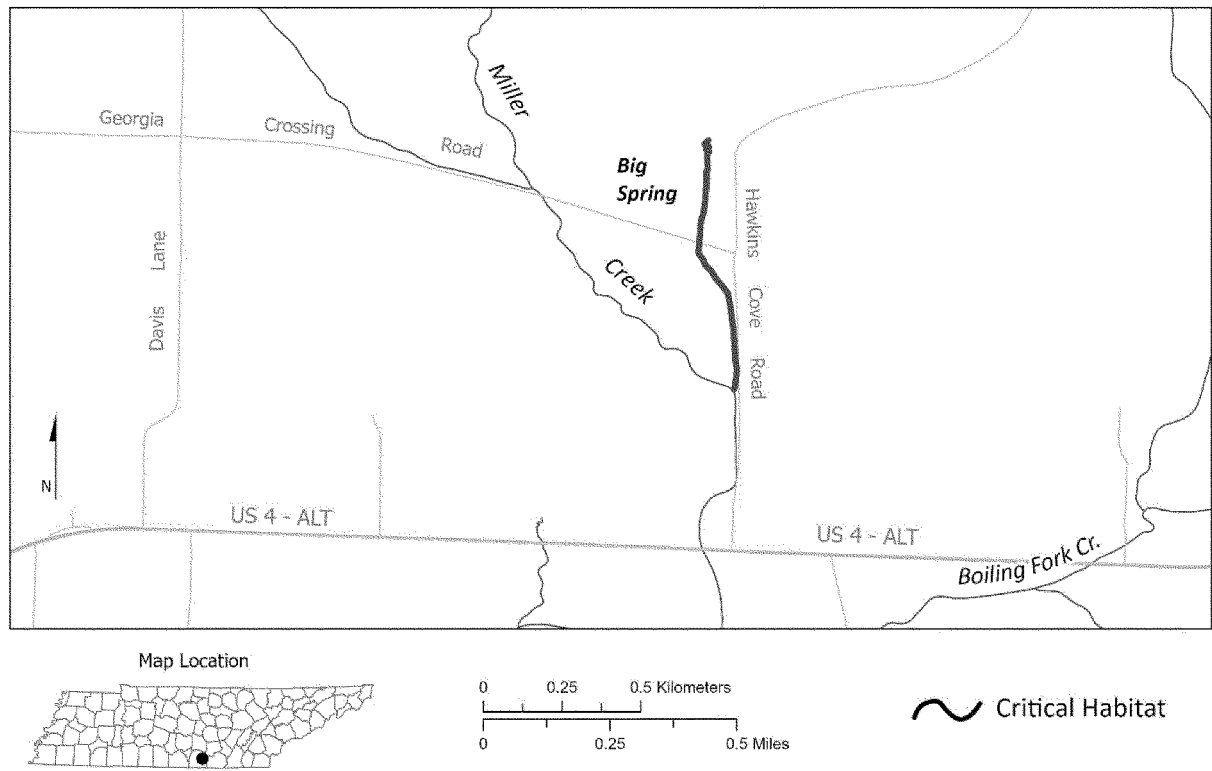
(i) Unit 7 consists of a springhead (35.1832°, -85.9831°) and

approximately 0.5-mi (0.85 km) of spring run between the springhead and the confluence with Miller Creek (35.1761°, -85.9822°).

(ii) Map of Unit 7 follows:

Figure 7 to Barrens Topminnow
(*Fondulus julisia*) paragraph (12)(ii)

Unit 7 Big Spring (Merkle) Critical Habitat for Barrens Topminnow (*Fundulus julisia*)

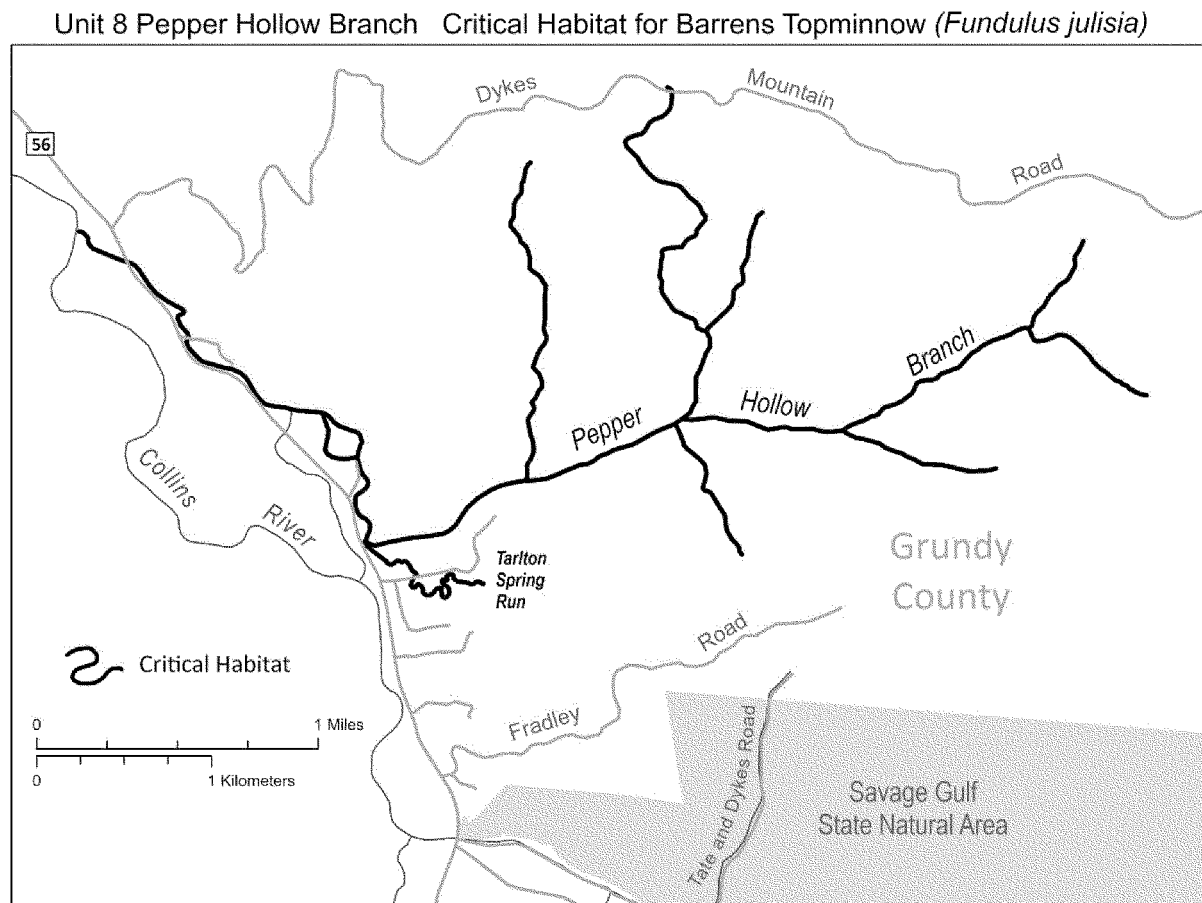


(13) Unit 8: Pepper Hollow Branch;
Grundy County, Tennessee.
(i) Unit 8 consists of 9.2 mi (14.8 km)
of Pepper Hollow Branch and its

permanent tributary reaches upstream of
the confluence with the Collins River
(35.5109°, – 85.6686°), located just
downstream of State Route 56.

(ii) Map of Unit 8 follows:

Figure 8 to Barrens Topminnow
(*Fondulus julisia*) paragraph (13)(ii)



* * * * *

Martha Williams,
Director, U.S. Fish and Wildlife Service.
[FR Doc. 2024-14320 Filed 7-8-24; 8:45 am]
BILLING CODE 4333-15-C

Notices

Federal Register

Vol. 89, No. 131

Tuesday, July 9, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Adoption of Recommendations

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Assembly of the Administrative Conference of the United States adopted four recommendations at its hybrid (virtual and in-person) Eighty-first Plenary Session: Choice of Forum for Judicial Review of Agency Rules, Individualized Guidance, Senate-Confirmed Officials and Administrative Adjudication, and Managing Congressional Constituent Service Inquiries.

FOR FURTHER INFORMATION CONTACT: For Recommendation 2024–1, Kazia Nowacki; Recommendation 2024–2, Benjamin Birkhill; Recommendation 2024–3, Matthew Gluth; and Recommendation 2024–4, Conrad Dryland. For each of these recommendations the address and telephone number are: Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION: The Administrative Conference Act, 5 U.S.C. 591–596, established the Administrative Conference of the United States. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies and makes recommendations to agencies, the President, Congress, and the Judicial Conference of the United States for procedural improvements (5 U.S.C. 594(1)). For further information about the Conference and its activities, see www.acus.gov.

The Assembly of the Conference met during its Eighty-first Plenary Session on June 13, 2024, to consider four proposed recommendations and

conduct other business. All four recommendations were adopted. In addition, three separate statements, which are permitted under ACUS's bylaws, were filed by various ACUS members regarding Recommendation 2024–3, *Senate-Confirmed Officials and Administrative Adjudication*.

Recommendation 2024–1, *Choice of Forum for Judicial Review of Agency Rules*. This recommendation provides that, when drafting a statute that provides for judicial review of agency rules, Congress ordinarily should provide that rules promulgated using notice-and-comment procedures are subject to direct review by a court of appeals. The recommendation also identifies common statutory ambiguities that Congress should avoid in drafting new or amending existing statutes that provide for judicial review of agency actions.

Recommendation 2024–2, *Individualized Guidance*. This recommendation offers practices to promote fairness, accuracy, and efficiency in agency processes for providing written guidance in response to requests for advice from members of the public. Among other topics, it will address processes for members of the public to request guidance from agencies; agency practices for drafting responses to guidance requests, including the personnel involved and mechanisms to ensure accuracy and consistency; the public availability of individualized guidance documents; and the extent to which members of the public can rely on legal interpretations and policy statements made in individualized guidance documents.

Recommendation 2024–3, *Senate-Confirmed Officials and Administrative Adjudication*. This recommendation examines, as a legal and practical matter, whether, when, how, and how often agency heads and other Senate-confirmed officials participate in the adjudication of cases across a range of federal administrative programs. For agencies that have decided to provide or are considering providing for participation by Senate-confirmed officials in the adjudication of individual cases, the recommendation identifies principles and practicalities that agencies should consider in structuring such participation and provides best practices for developing

and communicating relevant policies regarding such participation.

Recommendation 2024–4, *Managing Congressional Constituent Service Inquiries*. This recommendation identifies best practices for agencies to promote quality, efficiency, and timeliness in their procedures for managing and responding to congressional constituent service inquiries. Among other topics, it addresses the proper scope, content, internal dissemination, and public availability of such procedures; how agencies can use technology to streamline their management and resolution of constituent service inquiries; how agencies should adopt and evaluate constituent service-specific performance goals; and strategies for improving communication with congressional offices and staff.

The Conference based its recommendations on research reports and prior history that are posted at: <https://www.acus.gov/event/81st-plenary-session>.

Authority: 5 U.S.C. 595.

Dated: July 2, 2024.

Shawne C. McGibbon,
General Counsel.

Appendix—Recommendations of the Administrative Conference of the United States

Administrative Conference Recommendation 2024–1

Choice of Forum for Judicial Review of Agency Rules

Adopted June 13, 2024

Final rules adopted by federal agencies are generally subject to review in the federal courts.¹ In a series of recommendations adopted in the 1970s, 1980s, and 1990s, the Administrative Conference sought to identify principles to guide Congress in choosing the appropriate forum for judicial review of agency rules. The most significant was Recommendation 75–3, *The Choice of Forum for Judicial Review of Administrative Action*, which recommended that, in the case of rules adopted after notice and comment, Congress

¹ See 5 U.S.C. 702. This Recommendation does not address judicial review of adjudicative orders, including those that announce principles with rule-like effect or agency actions regarding petitions for rulemaking. Additionally, the Recommendation does not address suits challenging agency delay or inaction in promulgating rules. See *Telecomms. Rsch. & Action Ctr. v. Fed. Comm'n's Comm'n*, 750 F.2d 70, 72 (D.C. Cir. 1984); see generally Joseph W. Mead, *Choice of Forum for Judicial Review of Agency Rules* (May 9, 2024) (report to the Admin. Conf. of the U.S.).

generally should provide for direct review in the courts of appeals whenever “an initial district court decision respecting the validity of the rule will ordinarily be appealed” or “the public interest requires prompt, authoritative determination of the validity of the rule.”² Subsequent recommendations opposed altering the ordinary rules governing venue in district court actions against the United States,³ set forth a principle for determining when it is appropriate to give the Court of Appeals for the District of Columbia Circuit exclusive jurisdiction to review agency rules,⁴ and offered guidance to Congress on the factors it should consider in determining whether to assign responsibility for review to a specialized court.⁵ The Conference also addressed the choice of forum for judicial review of rules adopted under specific statutes.⁶

Several years ago, the Conference undertook a study to identify and review all statutory provisions in the *United States Code* governing judicial review of federal agency rules and adjudicative orders.⁷ Based on that initiative, ACUS adopted Recommendation 2021–5, *Clarifying Statutory Access to Judicial Review of Agency Action*,⁸ which recommended that Congress address statutory provisions that create unnecessary obstacles to judicial review or overly complicate the process of judicial review. That Recommendation also prompted questions regarding “whether Congress should specify where judicial review should be sought with regard to agency actions that are not currently the subject of any specific judicial review statute.”⁹

In this Recommendation, the Conference revisits the principles that should guide Congress in choosing the appropriate forum for judicial review of agency rules and in drafting clear provisions that govern the choice of forum. While this Recommendation offers drafting advice to Congress, agencies may also find it useful in responding to congressional requests for technical assistance.¹⁰

Determining the Court in Which To Seek Review

Absent a statute providing otherwise, parties may seek judicial review of agency rules in a district court. Although this approach may be appropriate in some contexts, direct review by a court of appeals is often more appropriate. For one, district court proceedings are less necessary when an agency has already compiled an administrative record that is adequate for judicial review and further appeal of a district-court decision is likely. Allowing parties to choose the district court in which to seek review also creates opportunities for forum shopping to a greater extent than when review is sought in a court of appeals.¹¹ For these and other reasons, Congress has in many contexts provided for direct review of agency rules in the courts of appeals. And in a minority of statutes, Congress has required parties to seek review in a single, specified tribunal.

In this Recommendation, the Conference generally reaffirms its earlier recommendations that Congress ordinarily should provide for direct review of agency rules by a court of appeals. The Conference believes that this principle is particularly important for rules promulgated through public notice and opportunity for comment. Such procedures produce a record that is conducive to review by an appeals court without need for additional development or factfinding, and drawing the line at rules promulgated after public notice and opportunity for comment provides a relatively clear jurisdictional rule.

Avoiding Drafting Ambiguities

Courts have faced two sources of ambiguity in interpreting choice-of-forum provisions which this Recommendation addresses.¹² First, some statutes specify the forum for review of “orders” without specifying the forum for review of “rules” or “regulations.” This can lead to uncertainty regarding whether “orders” includes rules, particularly because the Administrative Procedure Act defines an “order” as any agency action other than a rule.¹³ Second, some statutes are unclear as to the forum in which a party may file an action challenging the validity of a rule. A lack of clarity may result from statutory silence or a choice-of-forum provision of uncertain scope.

This Recommendation urges Congress, in drafting new or amending existing provisions governing the choice of forum for the review

of rules,¹⁴ to avoid using the term “orders” to encompass rules; to state clearly the forum in which judicial review of rules is available; and to state clearly whether such provisions apply to rule-related actions other than the promulgation of a rule.

Recommendation

1. When drafting a statute that provides for judicial review of agency rules, Congress ordinarily should provide that rules promulgated using notice-and-comment procedures are subject to direct review by a court of appeals.

2. When drafting a statute that provides for judicial review of agency actions, Congress should state explicitly whether actions taken under the statute are subject to review by a district court or, instead, subject to direct review by a court of appeals. If Congress intends to establish separate requirements for review of rules, as distinguished from other agency actions, it should refer explicitly to “rules” and not use the term “orders” to include rules.

Administrative Conference Recommendation 2024–2

Individualized Guidance

Adopted June 13, 2024

Agencies provide written guidance to help explain their programs and policies, announce interpretations of legal materials and how they intend to exercise their discretion, and communicate other important information to regulated entities, regulatory beneficiaries, and the broader public. When used appropriately, guidance documents—including what the Administrative Procedure Act (APA) calls general statements of policy and interpretive rules¹—can be important instruments of administration and of great value to agencies and the public. The Administrative Conference has adopted numerous recommendations to help agencies use and develop guidance documents effectively and appropriately, to make them publicly available, and to ensure that such documents are well organized, up to date, and easily accessible.²

¹⁴ This Recommendation provides advice to Congress in drafting future statutes. It should not be read to address existing statutes.

¹ 5 U.S.C. 553(b)(A). Some agencies define or use the term “guidance” to include materials that may not qualify as interpretive rules or policy statements under the APA. See Admin. Conf. of the U.S., Recommendation 2019–3, *Public Availability of Agency Guidance Documents*, 84 FR 38931 (Aug. 8, 2019).

² See, e.g., Admin. Conf. of the U.S., Recommendation 2022–3, *Automated Legal Guidance*, 87 FR 39798 (July 5, 2022); Admin. Conf. of the U.S., Recommendation 2021–7, *Public Availability of Inoperative Agency Guidance Documents*, 87 FR 1718 (Jan. 12, 2022); Recommendation 2019–3, *supra* note 1; Admin. Conf. of the U.S., Recommendation 2019–1, *Agency Guidance Through Interpretive Rules*, 84 FR 38,927 (Aug. 8, 2019); Admin. Conf. of the U.S., Recommendation 2017–5, *Agency Guidance Through Policy Statements*, 82 FR 61734 (Dec. 29, 2017); Admin. Conf. of the U.S., Recommendation 2014–3, *Guidance in the Rulemaking Process*, 79 FR 35992 (June 25, 2014); Admin. Conf. of the U.S., Recommendation 92–2, *Agency Policy Statements*,

Continued

² 40 FR 27926 (July 2, 1975).

³ Admin. Conf. of the U.S., Recommendation 82–3, *Federal Venue Provisions Applicable to Suits Against the Government*, 47 FR 30706 (July 15, 1982).

⁴ *Id.*

⁵ Admin. Conf. of the U.S., Recommendation 91–9, *Specialized Review of Administrative Action*, 56 FR 67143 (Dec. 30, 1991).

⁶ Admin. Conf. of the U.S., Recommendation 76–4, *Judicial Review Under the Clean Air Act and Federal Water Pollution Control Act*, 41 FR 56767 (Dec. 30, 1976); Admin. Conf. of the U.S., Recommendation 91–5, *Facilitating the Use of Rulemaking by the National Labor Relations Board*, 56 FR 33851 (July 24, 1991).

⁷ See Jonathan R. Siegel, Admin. Conf. of the U.S., Sourcebook of Federal Judicial Review Statutes 33 (2021).

⁸ 86 FR 53262 (Sept. 27, 2021).

⁹ *Id.* at 53,262 n.7.

¹⁰ See Admin. Conf. of the U.S., Recommendation 2015–2, *Technical Assistance by Federal Agencies in the Legislative Process*, 80 FR 78161 (Dec. 16, 2015).

¹¹ See Mead, *supra* note 1; Admin. Conf. of the U.S., Recommendation 80–5, *Eliminating or Simplifying the “Race to the Courthouse” in Appeals from Agency Action*, 45 FR 84954 (Dec. 24, 1980).

¹² The Committee on Judicial Review, from which this Recommendation arose, identified a third source of ambiguity: Many statutes are unclear as to whether choice-of-forum provisions regarding rules apply only to rules promulgated by an agency or whether they apply also to other rule-related actions such as delay or inaction in promulgating a rule or the grant or denial of a petition for rulemaking. This Recommendation does not address this ambiguity. The Committee on Judicial Review has suggested it for future study by the Conference.

¹³ 5 U.S.C. 551(6).

In many federal programs, individuals may request written guidance from an agency regarding how the law applies to a requester's specific circumstances.³ Such "individualized guidance" goes by a variety of names, including advisory opinions, opinion letters, and letters of interpretation.⁴ The Internal Revenue Service issues private letter rulings to provide tax law advice to taxpayers,⁵ for example, and the Securities and Exchange Commission issues no-action letters to provide advice regarding whether a product, service, or action may violate federal securities law.⁶ In some programs, the provision of individualized guidance is authorized by statute; in others, agencies offer individualized guidance on their own initiative as a public service.

Agency practices vary in several key respects. Some individualized guidance is issued in a relatively formal manner (such as a signed letter on agency letterhead), while other individual guidance may be issued in relatively informal ways (such as in the body of an email).⁷ Some individualized guidance is reviewed and issued by agency heads or other senior officials, while other individualized guidance is prepared and issued by lower-level officials. Some individualized guidance has no legally binding effect on the agency or requester, while other such guidance may, for example, provide the requester with a defense to an agency enforcement action.⁸

Individualized guidance offers many benefits. It facilitates communication between an agency and requester, reduces uncertainty, promotes compliance, spurs useful transactions, and can be faster and less costly than other agency actions. For example, agencies may provide

individualized guidance to help a regulated party better understand whether its conduct may be permissible, and this may limit the need for future enforcement action. In addition, making individualized guidance publicly available can inform other interested persons about how the agency evaluates issues that may affect them.

At the same time, individualized guidance may raise concerns. Even if an agency does not intend to use individualized guidance to bind the public, requesters or others may nevertheless choose to follow the guidance strictly to limit the perceived risk of sanction in a future agency proceeding. Agencies also risk providing inconsistent guidance if they lack appropriate procedures for developing and reviewing it. In addition, some members of the public may lack equal access to processes for requesting individualized guidance or have limited opportunities to participate in processes for developing individualized guidance that affects them.

These benefits can be increased, and these concerns addressed, through the best practices identified in this Recommendation. The Recommendation encourages agencies, when appropriate, to establish procedures for providing individualized guidance to members of the public. It identifies procedures agencies should use to process requests for such guidance fairly, efficiently, and accurately,⁹ and it encourages agencies to make the guidance available to agency personnel and the public. It cautions agencies not to treat individualized guidance as creating binding standards on the public but identifies circumstances in which agencies should consider allowing the public to rely on such guidance (that is, circumstances in which agencies should consider adhering to guidance that is favorable to a person in a subsequent agency proceeding despite the nonbinding character of the guidance). It also urges agencies to involve their ombuds offices in supplementing or improving guidance to the public.¹⁰ Finally, it addresses circumstances in which agencies should use individualized guidance to support development of general rules.

This Recommendation recognizes the wide variation among the programs that agencies administer, the resources available to agencies, and the needs and preferences of persons with whom they interact. Agencies should account for these differences when implementing the best practices below and tailor their individualized guidance procedures accordingly.

⁹ Paragraph 7(f) of this Recommendation urges agencies to describe any fees they charge for individualized guidance, including circumstances where they will waive or reduce such fees. Agencies should avoid charging fees for such guidance that would impose undue burdens on people of limited means. See Admin. Conf. of the U.S., Recommendation 2023–8, *User Fees*, ¶ 3, 89 FR 1516 (Jan. 10, 2024) (recommending that agencies, as appropriate, should "set forth procedures for waiving or reducing user fees that would cause undue hardship for low-income individuals, members of historically underserved communities, small businesses, and other small entities").

¹⁰ See also Admin. Conf. of the U.S., Recommendation 2016–5, *The Use of Ombuds in Federal Agencies*, 81 FR 94316 (Dec. 23, 2016).

Recommendation

Individualized Guidance Policies

1. To the extent of, and in a manner consistent with, their resources, priorities, and missions, agencies should respond to requests from members of the public for written guidance by providing individualized written guidance regarding how the law applies to requesters' specific circumstances.

2. Agencies should not treat individualized guidance as creating standards with which noncompliance may form an independent basis for action in matters that determine the rights and obligations of any member of the public.

3. Agencies should develop policies regarding whether and when it is appropriate to allow a requester or other individual to rely on individualized guidance. In so doing, agencies should consider factors including:

a. The applicability of constitutional, statutory, or other authorities mandating or prohibiting a party's entitlement to rely on such guidance;

b. The accuracy and completeness of the information the requester provided at the time it sought the guidance;

c. The certainty of the relevant facts and law at the time the agency issued the guidance;

d. Changes in facts or law after initial issuance of the guidance;

e. The formality of the agency's individualized guidance procedure, including the position and authority of the agency officials involved in developing and issuing the guidance;

f. Whether a person other than the requester of individualized guidance may rely on it, which might depend on the similarity of the person's circumstances to the requester's circumstances; and

g. Whether allowing reliance is necessary to prevent significant hardship.

4. Agencies should explain in individualized guidance provided to requesters the extent to which requesters or others can rely on that guidance.

5. Even if agencies do not recognize a right for persons to rely on individualized guidance or encourage them to do so, agencies should, when appropriate and lawful, minimize hardships on persons who nevertheless acted in conformity with the guidance, such as by reducing or waiving any penalty for past noncompliance or taking enforcement action with solely prospective effect.

6. Agencies with ombuds offices should provide opportunities for members of the public to seek assistance from such offices to supplement individualized guidance or to resolve issues related to individualized guidance. Agencies should also involve such offices in efforts to improve agency policies and procedures related to individualized guidance.

Individualized Guidance Procedures

7. Agencies should develop written procedures for requesting and issuing individualized guidance. Agencies should publish such procedures in the **Federal Register** and, as appropriate, codify them in the *Code of Federal Regulations*. Agencies

⁵⁷ FR 30103 (July 8, 1992); Admin. Conf. of the U.S., Recommendation 76–5, *Interpretive Rules of General Applicability and Statements of General Policy*, 41 FR 56769 (Dec. 30, 1976).

³ This Recommendation does not cover guidance that is not requested by a member of the public, such as an agency warning letter explaining why the agency believes a regulated party is in violation of a law or regulation.

⁴ This Recommendation does not attempt to situate individualized guidance within the APA's categories of "rule," "order," "license," "sanction," or "relief," and it does not seek to define agency processes for providing individualized guidance as "rulemaking" or "adjudication." See 5 U.S.C. 551. Individualized guidance is distinguished from declaratory orders, which agencies may issue in the context of an adjudication to "terminate a controversy or remove uncertainty." 5 U.S.C. 554(e). Unlike most individualized guidance, declaratory orders are final agency actions and legally binding. See Admin. Conf. of the U.S., Recommendation 2015–3, *Declaratory Orders*, 80 FR 78161 (Dec. 16, 2015).

⁵ See Admin. Conf. of the U.S., Recommendation 75–5, *Internal Revenue Service Procedures: Taxpayer Services and Complaints*, 41 FR 3986 (Jan. 27, 1976).

⁶ See Admin. Conf. of the U.S., Recommendation 70–2, *SEC No-Action Letters Under Section 4 of the Securities Act of 1933*, 1 ACUS 34 (1970).

⁷ This Recommendation does not address guidance provided orally.

⁸ See generally Shalini Bhargava Ray, Individualized Guidance in the Federal Bureaucracy (June 4, 2024) (report to the Admin. Conf. of the U.S.).

should also make the procedures publicly available on their websites and, if applicable, in other agency publications. The procedures should describe:

- a. How members of the public may submit requests for individualized guidance, including the office(s) or official(s) responsible for receiving requests;
- b. The type(s) of individualized guidance members of the public may request;
- c. Any matters that the agency will not address through individualized guidance, including the rationale for not providing guidance as to such matters;
- d. The information that the requester should include with the request for individualized guidance;
- e. Whether the agency will make individualized guidance and any related information (including the identity of the requester and information from the request) publicly available as described in paragraphs 10 through 13;
- f. Any fees the agency charges for providing individualized guidance, as well as any provisions for waivers of, exemptions from, or reduced rates for such fees;
- g. Any opportunities for public participation in the preparation of individualized guidance;
- h. The manner in which a response to a request for individualized guidance will be provided to the requester;
- i. To the extent practicable, the expected timeframe for responding to requests for individualized guidance;
- j. Whether requesters may seek review of individualized guidance by a higher-level official; and
- k. The agency's policy, developed as described in paragraph 3, regarding whether and when it is appropriate for a requester or other individual to rely on individualized guidance.

8. Agencies should develop procedures for agency personnel to manage and process requests for individualized guidance, including:

- a. Allowing for electronic submission of, and response to, requests;
- b. Creating methods for identifying and tracking requests;
- c. Maintaining past responses to requests in a manner that allows agency personnel to identify and consider them when developing responses to new requests that present similar or related issues; and
- d. Ensuring that relevant personnel receive training in the agencies' individualized guidance procedures.

9. In cases in which members of the public other than the requester are likely to have information relevant to the request or are likely to be significantly affected by the agency's action, agencies should consider soliciting public participation before issuing individualized guidance.

Public Availability of Individualized Guidance

10. Absent substantial countervailing considerations, agencies should make publicly available on their websites any individualized guidance that affects, or may be of interest to, persons other than the requester, including regulated persons and regulatory beneficiaries.

11. When making individualized guidance available on their websites, agencies should, as appropriate:

- a. Identify the date, requester, and subject matter of the guidance;
- b. Identify the legal authority under which the guidance was issued and under what circumstances other parties may rely on the guidance; and
- c. Use other techniques to help the public find relevant information, such as indexing or tagging individualized guidance by general topic area.

12. When making individualized guidance publicly available, agencies should redact any information that is sensitive or otherwise protected from disclosure consistent with the Freedom of Information Act or other relevant information laws.

13. Agencies should keep individualized guidance on their websites current. If an agency modifies or rescinds a publicly available individualized guidance document, it should indicate on the face of the document that it has been modified or rescinded and direct readers to any successor guidance and any explanation for the modification or rescission.

Accessibility of Individualized Guidance Materials

14. Agencies that provide individualized guidance should maintain a page on their websites that provides easy access to the procedures described in Paragraph 7, all individualized guidance that they make publicly available as described in paragraphs 10 through 13, and information about electronically submitting a request for individualized guidance.

Use of Individualized Guidance in Aid of General Rulemaking

15. Agencies should periodically review individualized guidance to identify matters that may warrant the development of a general rule.

Administrative Conference Recommendation 2024-3

Senate-Confirmed Officials and Administrative Adjudication

Adopted June 13, 2024

Tens of thousands of federal agency officials participate in administrative adjudication. Most are members of the career civil service hired and supervised under the civil service laws. Several thousand, like administrative law judges (ALJs) and some administrative judges, are appointed by a department head.¹ Some, like many agency heads, are appointed by the President with the advice and consent of the Senate. It is to such "PAS" officials that federal laws typically assign authority to adjudicate matters, and it is PAS officials who—by rule, delegation of authority, and the development

of norms, practices, and organizational cultures—work with career civil servants and other officials to structure systems of administrative adjudication and oversee their operation, ensuring some measure of political accountability.

PAS officials often participate indirectly and directly in administrative adjudication. Indirectly, they may establish agency subunits and positions responsible for adjudicating cases. They may appoint and supervise adjudicators,² and they may appoint and supervise, or oversee the appointment and supervision of, other adjudicative personnel. PAS officials may coordinate with the President and Congress to help ensure that adjudicative subunits have the resources they need to adjudicate cases in a fair, accurate, consistent, efficient, and timely manner.³ PAS officials may also establish rules of procedure and practice to structure administrative adjudication,⁴ and they may develop substantive rules that supply the law in adjudications.

Additionally, PAS officials may participate directly in administrative adjudication, serving as the final, executive-branch decision makers in cases arising under the statutes they administer.⁵ Although questions regarding whether, when, and how PAS officials participate directly in the adjudication of cases are not new, they have gained new salience in recent years. Most notably, in *United States v. Arthrex*⁶ the Supreme Court held that a statute providing for the administrative resolution of certain patent disputes violated the Constitution's Appointments Clause by vesting final decisional authority in adjudicators in the U.S. Patent and Trademark Office's Patent Trial and Appeal Board, whose members are neither PAS officials nor subject to at-will removal. The Court remedied the violation by holding unenforceable the statutory prohibition on the authority of a PAS official, the Director of the U.S. Patent and Trademark Office, to review the Board's decisions.

While Congress has for some programs determined by statute whether, when, and how PAS officials participate directly in the adjudication of cases, for many programs Congress has given agencies the discretion to

² See *Lucia*, 585 U.S. at 251 (holding that administrative law judges employed by the Securities and Exchange Commission are "Officers of the United States" and must be appointed in accordance with the Appointments Clause).

³ See Admin. Conf. of the U.S., Recommendation 2023-7, *Improving Timeliness in Agency Adjudication*, 89 FR 1513 (Jan. 10, 2024); Admin. Conf. of the U.S., Recommendation 2021-10, *Quality Assurance Systems in Agency Adjudication*, 87 FR 1722 (Jan. 12, 2022).

⁴ See, e.g., Admin. Conf. of the U.S., Recommendation 2018-5, *Public Availability of Adjudication Rules*, 84 FR 2142 (Feb. 6, 2019); see also Admin. Conf. of the U.S., Recommendation 2023-5, *Best Practices for Adjudication Not Involving an Evidentiary Hearing*, 89 FR 1509 (Jan. 10, 2024); Admin. Conf. of the U.S., Recommendation 2016-4, *Evidentiary Hearings Not Required by the Administrative Procedure Act*, 81 FR 94314 (Dec. 23, 2016).

⁵ See Admin. Conf. of the U.S., Recommendation 2020-3, *Agency Appellate Systems*, 86 FR 6618 (Jan. 22, 2021).

⁶ 594 U.S. 1 (2021).

¹ See *Lucia v. SEC*, 585 U.S. 237 (2018). Under the Constitution's Appointments Clause, art. II section 2, cl. 2, "Officers of the United States" must be appointed through presidential nomination and Senate confirmation, except that "Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

develop procedures and practices that are effective and appropriate for the specific programs they administer. This Recommendation provides a framework to help agencies develop effective procedures and practices, when required or appropriate, for direct participation by PAS officials in the adjudication of individual cases.

It does not address whether Congress or agencies should, for constitutional or other reasons, provide for direct participation by PAS officials in the adjudication of individual cases under specific programs. Nor does this recommendation address the broader question of whether and when agencies should develop policies through rulemaking, adjudication, setting enforcement priorities, or other means. Of course, Congress and agencies must pay careful attention to such questions and ensure that laws, rules, and policies comport with applicable legal requirements.

To develop effective and appropriate procedures and practices, agencies must consider, in addition to applicable constitutional and statutory requirements, the characteristics of PAS officials and the potential consequences of such characteristics for fair, accurate, consistent, efficient, and timely adjudication. While there is wide variation among PAS positions and PAS officials, at least five characteristics commonly distinguish PAS positions and officials from other agency positions and officials, especially career civil servants.

First, as the Administrative Conference has previously noted, there are often numerous vacancies in PAS positions.⁷ Frequent vacancies exist for several reasons, including delays related to the appointments process. When adjudicative functions are assigned to PAS positions, vacancies in those positions can affect the timeliness of adjudication. At some agencies, for example, vacancies or the lack of a quorum have resulted in long delays.⁸

Second, there is relatively high turnover in PAS positions, and PAS officials almost always serve in their positions for a shorter time than career civil servants. Thus, PAS officials may lack preexisting relationships with agency employees, knowledge of agency processes, and the specialized adjudicative expertise that career adjudicators develop as a result of their work and experience in this area.

Third, unlike career civil servants who are hired without regard to political affiliation, activity, or beliefs,⁹ PAS officials are often nominated by the President at least in part *because* of their political affiliation, activity, or beliefs. PAS officials are also subject to removal by the President, although a statute may impose for-cause or other limitations on their removal. Unlike officials appointed by a department head or the President alone, however, PAS officials are also confirmed by

the Senate, which may make them more attentive to Congress than career agency officials. On the one hand, such exposure to politics may help ensure that agency decision making, including the development of policy through case-by-case adjudication, remains publicly accountable. And given their relationships with the President, other political appointees, and Congress, PAS officials may be well equipped to address systemic problems, identified through the adjudication of cases, that require intra- or interbranch coordination. On the other hand, the involvement of PAS officials in administrative adjudication may raise concerns about the impartiality and objectivity of agency decision making.¹⁰

Fourth, unlike career adjudicators, who are often appointed based on prior adjudicative or litigation experience,¹¹ PAS officials are often appointed for other reasons such as prior experience in a particular industry or familiarity with a particular policy domain. PAS officials may have better access to substantive, subject-matter expertise than other agency decision makers, which may improve the quality of policies developed through case-by-case adjudication. On the other hand, they may lack experience or familiarity with the procedural aspects of administrative adjudication.

Fifth, PAS officials often sit atop agency hierarchies, and statutes often assign PAS officials, especially the heads of cabinet departments, a broad range of responsibilities, potentially including the administration of multiple programs and, under any given program, multiple functions (e.g., rulemaking, investigation, prosecution) in addition to adjudication. Such responsibilities can provide PAS officials with a unique opportunity to coordinate policymaking within and across programs, promote consistent decision making, and gain better awareness of the adjudicative and regulatory systems for which they are statutorily responsible. On the other hand, because PAS officials often face many competing demands on their time, they may have less practical capacity to devote to the adjudication of individual cases than other officials whose primary function is to adjudicate cases.¹² Additionally, some have raised concerns in certain contexts that the combination of adjudication and enforcement functions (investigation and prosecution) in a single official may affect the integrity of agency proceedings and that the combination of adjudication and rulemaking functions in a single official may encourage the resolution of important legal and policy issues through case-by-case adjudication, even when general rulemaking offers a better mechanism for resolving such issues.¹³

Considering these and other characteristics, and consistent with statutory and regulatory requirements, agencies must

determine whether participation by PAS officials in the adjudication of cases provides an effective mechanism for directing and supervising systems of administrative adjudication and, if it does, what procedures and practices will permit PAS officials to adjudicate cases in a manner that best promotes fairness, accuracy, consistency, efficiency, and timeliness. The Conference has addressed some of these issues in previous recommendations, most notably in Recommendation 68–6, *Delegation of Final Decisional Authority Subject to Discretionary Review by the Agency*;¹⁴ Recommendation 83–3, *Agency Structures for Review of Decisions of Presiding Officers Under the Administrative Procedure Act*;¹⁵ Recommendation 2018–4, *Recusal Rules for Administrative Adjudicators*;¹⁶ Recommendation 2020–3, *Agency Appellate Systems*;¹⁷ and Recommendation 2022–4, *Precedential Decision Making in Agency Adjudication*.¹⁸ Recognizing that agencies must consider applicable constitutional and statutory requirements and the unique characteristics of the programs they administer, this Recommendation builds on these earlier recommendations but focuses exclusively on identifying best practices to help agencies determine whether, when, and how PAS officials should participate directly in the adjudication of individual cases.

Recommendation

Determining Whether and When Officers Appointed by the President With the Advice and Consent of the Senate—PAS Officials—Should Participate in the Adjudication of Cases

1. When a statute authorizes a PAS official or collegial body of PAS officials to adjudicate matters arising under the statute, and such authority is delegable as a constitutional and statutory matter, the agency ordinarily should delegate to one or more non-PAS adjudicators responsibility for conducting initial proceedings (*i.e.*, receiving and evaluating evidence and arguments and issuing a decision). PAS officials, individually or as a collegial body, should exercise their retained statutory authority to conduct initial proceedings ordinarily only if:

a. A matter is exceptionally significant or broadly consequential, and they have the capacity personally to receive and evaluate evidence and arguments and issue a decision in a fair, accurate, consistent, efficient, and timely manner; or

b. There are unlikely to be disputed issues of fact, the matter to be decided does not require taking much evidence, and resolution of the matter turns on qualitative judgments of a broad nature.

2. When a statute authorizes a PAS official or a collegial body of PAS officials to adjudicate matters arising under the statute or review lower-level decisions rendered by other adjudicators, and such authority is delegable as a constitutional and statutory

⁷ See Admin. Conf. of the U.S., Recommendation 2019–7, *Acting Agency Officials and Delegations of Authority*, 84 FR 71352 (Dec. 27, 2019).

⁸ See Matthew A. Gluth, Jeremy S. Graboyes & Jennifer L. Selin, Participation of Senate-Confirmed Officials in Administrative Adjudication 40–42 (June 9, 2024) (report to the Admin. Conf. of the U.S.).

⁹ 5 U.S.C. 2301.

¹⁰ See Gluth, Graboyes & Selin, *supra* note 8 at 45–50.

¹¹ See Admin. Conf. of the U.S., Recommendation 2019–2, *Agency Recruitment and Selection of Administrative Law Judges*, 84 FR 38930 (Aug. 8, 2019).

¹² See Gluth, Graboyes & Selin, *supra* note 8, at 52–56.

¹³ See *id.*

¹⁴ 38 FR 19783 (July 23, 1973).

¹⁵ 48 FR 57461 (Dec. 30, 1983).

¹⁶ 84 FR 2139 (Feb. 6, 2019).

¹⁷ 86 FR 6618 (Jan. 22, 2021).

¹⁸ 88 FR 2312 (Jan. 13, 2023).

matter, the agency should determine in which types of cases it would be beneficial for a PAS official or collegial body of PAS officials to review lower-level decisions rendered by other adjudicators and in which it would be more appropriate to delegate final decision-making authority to a non-PAS official (e.g., an agency "Judicial Officer") or a collegial body of non-PAS officials (e.g., a final appellate board). If a PAS official or collegial body of PAS officials delegates final decision-making authority to other officials, they should adopt mechanisms to ensure adequate direction and supervision of decision makers exercising delegated authority. Circumstances in which it may be beneficial for an agency to provide for review by a PAS official or a collegial body of PAS officials include:

a. Cases that involve legal or factual issues that are exceptionally significant or broadly consequential;

b. Cases that involve a novel or important question of law, policy, or discretion, such that direct participation by one or more PAS officials would promote centralized or politically accountable coordination of policymaking; and

c. When participation by one or more PAS officials in the adjudication of individual cases would promote consistent decision making by agency adjudicators.

3. When it would be beneficial to provide for review by a PAS official or a collegial body of PAS officials, the agency should, consistent with constitutional and statutory requirements, determine the appropriate structure for such review. Structural options include:

a. *Providing the only opportunity for administrative review of lower-level decisions.* This option may be appropriate

when caseloads are relatively low and individual cases frequently raise novel or important questions of law, policy, or discretion.

b. *Delegating first-level review authority to a non-PAS official, such as an agency "Judicial Officer," or an appellate board and retaining authority to exercise second-level administrative review in exceptional circumstances.* This option may be appropriate when caseloads are relatively high and individual cases only occasionally raise novel or important questions of law, policy, or discretion or have significant consequences beyond the parties to the case.

c. *Delegating final review authority to another PAS official.* This option may be appropriate, for example, when individuals, by virtue of holding another PAS position, have greater access to subject-matter expertise or greater capacity to adjudicate cases in a fair, accurate, consistent, efficient, and timely manner.

d. *For collegial bodies of PAS officials, delegating first-level review authority to a single member or panel, and retaining authority for the collegial body as a whole to exercise second-level (and final) administrative review.* This option may be appropriate when a collegial body manages a relatively high caseload and most individual cases do not raise novel or important questions of law, policy, or discretion or have significant consequences beyond the parties to the case.

Initiating Review by PAS Officials

4. An agency ordinarily should provide that a decision subject to review by a PAS official or a collegial body of PAS officials becomes final and binding after a specified number of days unless, as applicable:

a. A party or other interested person files a petition for review, if a statute entitles a party or other interested person to such review;

b. A PAS official or collegial body of PAS officials exercises discretion to review the decision upon petition by a party or other interested person;

c. A PAS official or collegial body of PAS officials exercises discretion to review the lower-level decision upon referral by the adjudicator or appellate board (as a body or through its chief executive or administrative officer) that issued the decision;

d. A PAS official or collegial body of PAS officials exercises discretion to review the decision upon request by a federal official who oversees a program impacted by a decision, or his or her delegate; or

e. A PAS official or collegial body of PAS officials exercises discretion to review the decision *sua sponte*.

5. When a PAS official or collegial body of PAS officials serves as a first-level reviewer, an agency should develop a policy for determining the circumstances in which such review may be exercised. Review may be warranted if there is a reasonable probability that:

a. The adjudicator who issued the lower-level decision committed a prejudicial procedural error or abuse of discretion;

b. The lower-level decision includes an erroneous finding of material fact;

c. The adjudicator who issued the lower-level decision erroneously interpreted the law or agency policy;

d. The case presents a novel or important issue of law, policy, or discretion; or

e. The lower-level decision presents a recurring issue or an issue that agency adjudicators have decided in different ways, and the PAS official or officials can resolve the issue more accurately and efficiently through precedential decision making.

6. When a PAS official or collegial body of PAS officials serves as a second-level reviewer, an agency should determine the circumstances in which such review may be warranted. To avoid multilevel review of purely factual issues, the agency should limit second-level review by a PAS official or collegial body of PAS officials to circumstances in which there is a reasonable probability that:

a. The case presents a novel or important issue of law, policy, or discretion; or

b. The first-level reviewer erroneously interpreted the law or agency policy.

7. When agency rules permit parties or other interested persons to file a petition requesting that a PAS official or a collegial body of PAS officials review a lower-level decision and review is discretionary, the agency should require that petitioners explain in the petition why such review is warranted with reference to the grounds for review identified in Paragraph 5 or 6, as applicable. Agency rules should permit other parties or interested persons to respond to the petition or file a cross-petition.

8. An agency should provide that if a PAS official or collegial body of PAS officials, or a delegate, does not exercise discretion to grant a petition for review within a set time period, the petition is deemed denied.

9. In determining whether to provide for interlocutory review by a PAS official or collegial body of PAS officials of rulings by agency adjudicators, an agency should evaluate whether such review can be conducted in a fair, accurate, consistent, efficient, and timely manner, considering the best practices identified in Recommendation 71–1, *Interlocutory Appeal Procedures*.

10. When a PAS official or collegial body of PAS officials exercises discretion to review a lower-level decision (e.g., by granting a petition or accepting a referral), the agency should:

a. Notify the parties;

b. Provide a brief statement of the grounds for review; and

c. Provide the parties a reasonable time to submit written arguments.

PAS Official Review Process

11. A PAS official or collegial body of PAS officials who reviews a lower-level decision ordinarily should limit consideration to the evidence and legal issues considered by the adjudicator who issued that decision. The PAS official or collegial body of PAS officials should consider new evidence and legal issues, if at all, only if (a) the proponent of new evidence or a new legal issue shows that it is material to the outcome of the case and that, despite due diligence, it was not available when the record closed, or (b) consideration of a new legal issue is necessary to clarify or establish agency law or policy. In situation (a), the PAS official or collegial body of PAS officials should determine whether it would be more effective to consider the new evidence or legal issue or instead to remand the case to another adjudicator for further development and consideration.

12. An agency should provide a PAS official or collegial body of PAS officials discretion to permit oral argument on their own initiative or upon a party's request if doing so would assist the PAS official(s) in deciding the matter.

13. In cases when a PAS official or collegial body of PAS officials will decide a novel or important question of law, policy, or discretion, the agency should provide the PAS official(s) discretion to solicit arguments from interested members of the public, for example by inviting amicus participation, accepting submission of written comments, or holding a public hearing to receive oral comments.

Integrity of the Decision-Making Process

14. To promote impartiality and the appearance of impartiality, each agency at which PAS officials participate in the adjudication of individual cases should have a process for determining if participation by a particular PAS official in a case would violate government-wide or agency-specific ethics standards and hence require recusal. Agencies should also have a process for determining if participation would raise other significant concerns, and if so,

determine whether and in what circumstances PAS officials should recuse themselves from participating in a case based on those concerns.

Coordination of Policymaking and Decision Making by Agency Adjudicators

15. An agency ordinarily should treat decisions of PAS officials as precedential if they address novel or important issues of law, policy, or discretion, or if they resolve recurring issues or issues that other agency adjudicators have decided in different ways. Unless the agency treats all decisions of PAS officials as precedential, in determining whether and under what circumstances to treat such decisions as precedential, the agency should consider the factors listed in Paragraph 2 of Recommendation 2022–4, *Precedential Decision Making in Agency Adjudication*.

16. Each agency periodically should review petitions for review and decisions rendered by PAS officials to determine whether issues raised repeatedly indicate that the agency, its adjudicators, or the public may benefit from rulemaking or development of guidance.

Adjudicative Support for PAS Officials

17. When a PAS official or collegial body of PAS officials adjudicates individual cases, agencies should assign or delegate case-related functions to non-PAS officials, when appropriate, including:

- a. Performing routine tasks such as managing dockets and case filings; managing proceedings, including the submission of materials and the scheduling of oral arguments;
- b. Responding to routine motions;
- c. Dismissing, denying, and granting petitions for review in routine circumstances when such action is clearly warranted, for example when a petition is untimely, a party requests to withdraw a petition, or the parties to a proceeding agree to a settlement;
- d. Conducting the preliminary review of lower-level decisions, evidence, and arguments;
- e. Conducting the preliminary evaluation of petitions for review and petitions for reconsideration;
- f. Identifying unappealed decisions that may warrant review by a PAS official or collegial body of PAS officials;
- g. Encouraging settlement and approving settlement agreements;
- h. Conducting legal and policy research;
- i. Recommending case dispositions;
- j. Preparing draft decisions and orders for review and signature by a PAS official or collegial body of PAS officials;
- k. Transmitting decisions and orders to parties and making them publicly available; and
- l. Staying decisions and orders pending reconsideration by a PAS official or collegial body of PAS officials or judicial review.

18. When a PAS official or collegial body of PAS officials adjudicates individual cases, the agency should determine which offices or officials are best suited to perform assigned or delegated functions such as those in paragraph 17 in a fair, accurate, consistent, efficient, and timely manner. Possibilities include:

- a. Adjudicators and staff who serve at an earlier level of adjudication;
- b. Full-time appeals counsel;
- c. Advisors to a PAS official;
- d. The chief legal officer or personnel under his or her supervision; and
- e. A Clerk or Executive Secretary or personnel supervised by such officials.

In making such determinations, the agency should ensure adequate separation between personnel who support a PAS official or collegial body of PAS officials in an adjudicative capacity and those who support the PAS official(s) in an investigative or prosecutorial capacity.

Transparency

19. Each agency should provide updated access on its website to decisions issued by PAS officials, whether or not designated as precedential, and associated supporting materials. In posting decisions, the agency should redact identifying details to the extent required to prevent an unwarranted invasion of personal privacy and any information that implicates sensitive or legally protected interests involving, among other things, national security, law enforcement, confidential business information, personal privacy, or minors. In indexing decisions on its website, the agency should clearly indicate which decisions are issued by PAS officials.

20. Each agency ordinarily should presume that oral arguments and other review proceedings before PAS officials are open to public observation. Agencies may choose to close such proceedings, in whole or in part, to the extent consistent with applicable law and if there is substantial justification to do so, as described in Recommendation 2021–6, *Public Access to Agency Adjudicative Proceedings*.

Development and Publication of Procedures for Adjudication by PAS Officials

21. Each agency should publish procedural regulations governing the participation of PAS officials in the adjudication of individual cases in the **Federal Register** and codify them in the *Code of Federal Regulations*. These regulations should cover all significant procedural matters pertaining to adjudication by PAS officials. In addition to those matters identified in Paragraph 2 of Recommendation 2020–3, *Agency Appellate Systems*, such regulations should address, as applicable:

- a. Whether and, if so, which PAS officials may participate directly in the adjudication of cases;
- b. The level(s) of adjudication (e.g., hearing level, first-level appellate review, second-level appellate review) at which a PAS official or collegial body of PAS officials have or may assume jurisdiction of a case (see Paragraphs 1–3);
- c. Events that trigger participation by a PAS official or collegial body of PAS officials (see Paragraph 4);
- d. An exclusive, nonexclusive, or illustrative list of circumstances in which a PAS official or collegial body of PAS officials will or may review a decision or assume jurisdiction of a case, if assumption of jurisdiction or review is discretionary (see Paragraphs 5–6);

e. The availability, timing, and procedures for filing a petition for review by a PAS official or collegial body of PAS officials, including any opportunity for interlocutory review, and whether filing a petition is a mandatory prerequisite to judicial review (see Paragraphs 7 and 9);

f. The actions the agency may take upon receiving a petition (e.g., grant, deny, or dismiss it), and whether the agency's failure to act on a petition within a set period of time constitutes denial of the petition (see Paragraph 8);

g. The form, contents, and timing of notice provided to the parties to a case when proceedings before a PAS official or collegial body of PAS officials are initiated (see Paragraphs 9–10);

h. The record for decision making by a PAS official or collegial body of PAS officials and the opportunity, if any, to submit new evidence or raise new legal issues (see Paragraph 11);

i. Opportunities for oral argument (see Paragraph 12);

j. Opportunities for public participation (see Paragraph 13);

k. The process for determining if participation by a PAS official in a case would violate government-wide or agency-specific ethics standards (see Paragraph 14);

l. Circumstances, if any, in which PAS officials should recuse themselves from participating in a case for reasons not addressed in government-wide or agency-specific ethics standards, and the process for determining whether such circumstances are present (see Paragraph 14);

m. The treatment of decisions by PAS officials as precedential (see Paragraph 15);

n. Any significant delegations of authority to agency adjudicators; appellate boards; staff attorneys; clerks and executive secretaries; other support personnel; and, in the case of collegial bodies of PAS officials, members who serve individually or in panels consisting of fewer than all members (see Paragraphs 17–18);

o. Any delegations of review authority or alternative review procedures in effect when a PAS position is vacant or a collegial body of PAS officials lacks a quorum; and

p. The public availability of decisions issued by PAS officials and supporting materials, and public access to proceedings before PAS officials (see Paragraphs 19–20).

22. An agency should provide updated access on its website to the regulations described in Paragraph 21 and all other relevant sources of procedural rules and related guidance documents and explanatory materials.

Separate Statement for Administrative Conference Recommendation 2024–3 by Senior Fellow Christopher J. Walker and Public Member Melissa F. Wasserman

Filed June 27, 2024

We are pleased to see the Administrative Conference adopt such an important and timely recommendation concerning best practices for agency-head review in administrative adjudication. We write separately to address that which the Administrative Conference prudentially chose not to: “whether Congress or agencies

should, for constitutional or other reasons, provide for direct participation by [presidentially appointed, Senate-confirmed (PAS)] officials in the adjudication of individual cases under specific programs.” Our answer is yes.

Elsewhere, we have made the case for why the “standard model” for agency adjudication does and should include agency-head final decisionmaking authority. See Christopher J. Walker & Melissa F. Wasserman, *The New World of Agency Adjudication*, 107 Calif. L. Rev. 141 (2019). In our view, agency-head review is valuable because it assists the agency to make precedential policy, to increase consistency in adjudicative outcomes, to gain greater awareness of how a regulatory system is functioning, and to make the agency’s adjudicatory efforts more politically accountable.

Regardless of whether one is convinced by our normative arguments, agency-head review is likely now a constitutional requirement. If the Supreme Court did not so conclude in *United States v. Arthrex*, 594 U.S. 1 (2021), it came quite close. And the Court is bound to expressly embrace that constitutional rule in the near future. Accordingly, it would be wise for every agency—and Congress, where statutory fixes are required—to ensure some form of direct review by the agency head.

As agencies (and Congress) revisit adjudication systems in light of this constitutional requirement, two parts of the Recommendation are worth underscoring.

First, a constitutional requirement of agency-head final decisionmaking authority does not mean the agency head must review every decision in every case. Especially in higher-volume adjudication systems, agencies should design appellate systems to conduct such review, including the issuance of precedential decisions where appropriate. See generally Christopher J. Walker, Melissa Wasserman & Matthew Lee Wiener, *Precedential Decision Making in Agency Adjudication* (Dec. 6, 2022) (report to the Admin. Conf. of the U.S.); Christopher J. Walker & Matthew Lee Wiener, *Agency Appellate Systems* (Dec. 14, 2020) (report to the Admin. Conf. of the U.S.). In our view, such delegation of final decisionmaking authority would be constitutional under the Supreme Court’s evolving approach to separation of powers so long as the agency head preserves the authority to intervene and issue a final decision when necessary.

Second, it is critical, as the Recommendation advises, that “the agency ordinarily should delegate to one or more non-PAS adjudicators responsibility for conducting initial proceedings (*i.e.*, receiving and evaluating evidence and arguments and issuing a decision).” Although the Administrative Procedure Act allows the agency head to preside over an evidentiary hearing, that is not—and should not be—the norm. The standard model for agency adjudication has two key structural features: the possibility of a final decision by a politically accountable agency head, as noted above, and an initial hearing and decision by a decisionally independent, tenure-protected agency adjudicator. See Aaron L. Nielson,

Christopher J. Walker & Melissa F. Wasserman, *Saving Agency Adjudication*, 103 Tex. L. Rev. (forthcoming 2025).

This standard model enables a specific method for political control of agency adjudication, which is both transparent and circumscribed. Importantly, it ensures that an impartial agency adjudicator compiles the administrative record and makes the initial findings and decision. In a world where the Constitution requires political control of final agency adjudication decisions, it becomes all the more important that the hearing-level adjudicator bases the initial decision on the law and a matter’s individual facts—and not out of a fear of being fired or otherwise punished for not sharing the politics or policy preferences of the agency head.

Separate Statement for Administrative Conference Recommendation 2024–3 by Public Member John F. Duffy, Joined by Public Members Jennifer B. Dickey, Jennifer L. Mascott, and Kate Todd

Filed June 27, 2024

I respectfully dissent from the promulgation of this Recommendation. The Recommendation instructs agencies that, in many common circumstances, they “should” delegate adjudicative power downward into the bureaucracy—*i.e.*, away from officers appointed by the President with the advice and consent of the Senate (“PAS officials”) and toward agency officials not so appointed (“non-PAS” officials). To make matters worse, the Recommendation tells agencies that they “should” limit review by PAS officials so that the lower-level officials will often have the last word in adjudicating many issues, including important factual determinations.

The overall tenor of the Recommendation is, in my view, entirely too much in favor of pushing responsibility away from top agency officials (whose appointment process is controlled by the democratically accountable President and Senators) and toward a far less accountable set of lower-level officials in the bureaucracy. The Recommendation thereby encourages top officials to shun responsibility for the decisions of their agencies. In my view, a body such as ACUS—which is statutorily charged with helping formulate recommendations for action “by proper authorities” for ensuring that “Federal responsibilities may be carried out expeditiously in the public interest” (5 U.S.C. 591(1))—should be encouraging responsibility, not irresponsibility, at the very highest levels of government.

The Recommendation’s encouragement of the downward diffusion of power is particularly evident in six paragraphs. First, paragraph 1 tells agencies that they “ordinarily should delegate” to lower-level officials initial adjudicatory responsibilities, including the crucial functions of “evaluating evidence” and “issuing a decision.” Agencies may well be able lawfully to delegate powers downward into the bureaucracy, but it merely encourages the shirking of responsibility at the top to tell agencies that they “should”—indeed, “should ordinarily”—delegate so as to empower an unaccountable or tenuously accountable bureaucracy.

To make matters worse, paragraph 1 goes further to recommend that top-level PAS officials “should” exercise initial adjudicative authority “only if” a case presents one of two uncommon circumstances, namely, (i) where the matter is “exceptionally significant or broadly consequential” or (ii) “[t]here are unlikely to be disputed issues of fact.” Thus, the suggested limit on top agency officials engaging in crucial adjudicatory functions such as “evaluating evidence” should be limited, outside of “exceptionally significant or broadly consequential” circumstances, to those cases where there’s very little adjudication of evidence to do. That’s not merely permitting higher officials to shun responsibility. It’s telling those officials that they “should” do so and that any attempts to take back adjudicatory power from the bureaucratic depths “should” occur “only” in highly unusual and exceptional times.

Second, paragraph 2 continues the pro-delegation push by encouraging agencies to enact policies that, in some class of cases, would “delegate final decision-making authority to a non-PAS official (*e.g.*, an agency “Judicial Officer”) or a collegial body of non-PAS officials (*e.g.*, a final appellate board).” I think the class of such cases should be the null set. In fact, legally it *is* the null set. Even where agency rules appear to delegate “final” decisional power to lower-level officials, such delegations can be undone at any time and in any case. Procedural agency rules (*i.e.*, those governing “agency organization, procedure, or practice”) can be repealed in the blink of an eye—without either notice-and-comment rulemaking or a 30-day waiting period to take effect. See 5 U.S.C. 553(c) & (d). Thus, even if an agency previously enacted rules purporting to delegate “final” authority to non-PAS officers, such a delegation is an illusion because, under the Constitution, some PAS officer must “have the discretion to review decisions” so that “the President remains responsible for the exercise of executive power.” *United States v. Arthrex*, 594 U.S. 1, 27 (2021). Agencies that follow this ACUS Recommendation and purport to delegate final power down into the bureaucracy are merely misleading the public by disguising the lines of ultimate authority that must remain in the control of PAS officers.

Third, paragraph 5 suffers from a different flaw than the one in paragraphs 1 and 2. While paragraphs 1 and 2 encourage agencies to delegate responsibility downward, paragraph 5 is insufficiently aggressive in instructing agencies when, if power is delegated, review by high-level officers should occur. The Recommendation states that agencies should promulgate policies concerning where such high-level review “may be exercised” and that review “may be warranted” in several circumstances. In my view, the permissive word “may” is precisely wrong. The paragraph should be phrased in terms of “should” and not merely “may.”

A quick review of the circumstances where the Recommendation tells agencies that review “may be warranted” demonstrates the point. Where a “lower-level decision includes an erroneous finding of material

fact” or “erroneously interpreted the law or agency policy,” the higher-level PAS officers in the agency really should intervene and correct the lower-level decision. This ACUS recommendation tells high level agency officers that they “may” want to review such decisions, but it’s not really necessary to do so. The paragraph is thus consistent with the overall thrust of the Recommendation to push power down into the bureaucracy and to diffuse responsibility, but it’s also utterly inconsistent with a Constitution designed to foster transparency, responsibility and accountability at the highest levels of the Executive Branch.

Fourth, paragraph 6 continues the theme of encouraging agencies to curtail higher-level review and responsibility. Where PAS officers serve as “second-level” reviewers, this paragraph encourages agencies once again to promulgate policies concerning circumstances in which review “may be warranted,” and it then tells agencies that they “should” limit second-level review of factual issues to two narrow sets of circumstances: (i) where “[t]he case presents a novel or important issue of law, policy, or discretion,” and (ii) where “[t]he first-level reviewer erroneously interpreted the law or agency policy.” Importantly, neither of those two circumstances involve incorrect factual determinations.

Thus, in a garden-variety case in which the lower-level decision does not get the law or policy wrong, but the supervising PAS officers believes the lower-level decision may be wildly wrong on the facts, this paragraph recommends that agencies “should limit” the review in order to “avoid multilevel review of purely factual issues.” For a party aggrieved by a lower-level decision that poorly adjudicated the facts, this paragraph encourages supervising PAS officers to tell the aggrieved party “too bad—the buck stops at the lower-level official.”

Fifth, while paragraph 11 has a meritorious general goal of preventing parties from withholding evidence and arguments from a lower-level adjudicator where power is delegated downward, it is too restrictive in the set of circumstances in which new matters might be considered by the higher-level official. The first sentence of the paragraph 11 states the unobjectionable principle that higher-level officials engaging in review of a lower-level decision “ordinarily should limit consideration to the evidence and legal issues considered by the adjudicator who issued that decision.” That’s “ordinarily” a good rule, but the next sentence purports to limit exceptions to the ordinary rule to two circumstances “only.” Indeed, the sentence emphasizes exceptions begrudgingly, stating that PAS officials should consider new evidence and legal issues “if at all” only in the two circumstances set forth. Once again, the tenor of the Recommendation is to restrict the power of higher-level officers to limited categories. That’s the wrong approach. Higher-level officers should be told in clear terms that they bear ultimate responsibility for their agencies’ actions and that they should engage in all the review they deem necessary in order to make sure that they are comfortable bearing that responsibility.

Sixth, paragraph 17 closes out the pro-delegation theme of the Recommendation by advising that, even where PAS officers do adjudicate individual cases, agencies “should” delegate certain case-related functions to non-PAS officials. Some of those case-related functions are truly mechanical, such as “[t]ransmitting decisions and orders to parties and making them publicly available,” but many are much more important, such as “[c]onducting legal and policy research,” “[r]ecommending case dispositions,” and “[p]reparing draft decisions and orders for review and signature by a PAS official or collegial body of PAS officials.” Research into law and policy and the subsequent drafting of decisions are crucial functions of adjudication, and the high-level PAS officers in an agency should be afforded the time and resources to perform those functions. They should not be relegated merely to supplying the “signature” to validate decisions researched and drafted by others.

President Harry Truman famously had a sign on his desk reading: “The buck stops here!” See <https://www.trumanlibrary.gov/education/trivia/buck-stops-here-sign> (setting forth images of Truman’s wooden desk sign). That principle is not merely folksy wisdom; it has constitutional dimension. As the Supreme Court recently reaffirmed in *United States v. Arthrex*, the Take Care Clause and other features of Article II require that the President be “responsible for the actions of the Executive Branch” and that he “cannot delegate [that] ultimate responsibility or the active obligation to supervise that goes with it.” 594 U.S. 1, 11 (2021) (internal quotations omitted). A corollary of that principle is that, as the *Arthrex* decision confirms, high-level PAS officers cannot be relieved of “responsibility for the final decisions” of the subordinate officers under their supervision. *Id.* at 15. In short, the tenor of the *Arthrex* decision is to prevent the diffusion of responsibility deep into the bureaucracy. For decisions within an Executive agency, the buck has to stop with the PAS officers and, ultimately, with the President who has to bear ultimate responsibility.

The thrust of this ACUS Recommendation is the exact reverse of those principles. High-level PAS officers are encouraged to push down adjudicatory responsibility and then to limit their review of the resulting lower-level decisions. That’s a charter for the diffusion of power in the depths of the bureaucracy, and the very opposite of responsible administration within the Executive Branch.

Separate Statement for Administrative Conference Recommendation 2024-3 by Public Member Jennifer L. Mascott

Filed June 28, 2024

I signed onto the concerns raised by Professor John Duffy and joined by Kate Todd and Jenn Dickey because the Appointments Clause requirements of Article II of the U.S. Constitution are an important constraint ensuring that government officials exercise authority in a way that is accountable back to elected officials and ultimately the American public. Therefore, under the Appointments Clause, “officers of the United States” who exercise that

authority must be selected by the President subject to Senate consent or by the President alone, a department head, or a court of law. U.S. Const. art. II, section 2, clause 2 (“He . . . shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.”).

This ACUS recommendation inverts that hierarchy by recommending that decisions be pushed lower into the administrative bureaucracy rather than ensuring that appointed officials must take responsibility for the outcomes of executive adjudication. Today the United States Supreme Court recognized the importance of this democratic accountability structure by removing certain decisions from adjudicators within the Securities and Exchange Commission, noting that common-law securities fraud claims must be resolved by Article III courts with jury trial protections. See *SEC v. Jarkesy*, ___ S. Ct. ___ (2024). In instances where common law judicial authority is being exercised in adjudication, the Article III presidentially appointed judicial, and jury system, must resolve those claims at the federal level. In instances of executive adjudication, ultimately the President must take responsibility for final outcomes by supervising officers whose nomination and appointment he oversees and directs. Congress further has a role by constitutionally being required to create the offices those decisionmakers fill.

Therefore, I respectfully dissent from the June 2024 ACUS Recommendation addressing the Participation of Senate-Confirmed Officials in Administrative Adjudication.

Administrative Conference Recommendation 2024-4

Managing Congressional Constituent Service Inquiries

Adopted June 13, 2024

Since the country’s earliest years, constituent services have been a cornerstone of the representational activities of members of Congress. Thousands of people each year contact their elected representatives for help accessing federal programs or navigating adjudicative and other similar administrative processes. Elected representatives and their staff often submit requests to federal agencies on behalf of their constituents in such situations. This Recommendation refers to such requests as constituent service, or “casework,”¹ requests. In most circumstances, the resolution of an individual’s issue should not require the assistance of the individual’s elected

¹ This Recommendation and the best practices it identifies are intended to assist agencies with improving their management and resolution of congressional casework requests. Agency management of congressional requests directed towards programmatic or policy oversight is beyond the scope of this Recommendation.

representative or his or her staff.² However, these casework requests often appear to be helpful in ensuring appropriate agency action. For agencies, congressional casework requests may reveal broader, systemic problems with their policies and procedures. For Congress, casework requests may also play an important role in oversight of executive-branch agencies, allowing members of Congress to gain greater awareness of the operation and performance of the programs Congress authorizes and funds.

Today, every member of Congress employs “caseworkers,” both in Washington, DC, and in local offices, who help constituents with requests ranging from the simple, such as assistance with government forms, to the complex, such as correcting errors in veterans’ service records. While nearly all agencies receive congressional casework requests, the agencies most frequently contacted include the Department of Veterans Affairs, Internal Revenue Service, Social Security Administration, Department of State, and U.S. Citizenship and Immigration Services.³

Agencies have developed practices for receiving, processing, and responding to requests and interacting with congressional caseworkers. There is significant variation in these practices across a number of dimensions.

Organization: Some agencies assign responsibility for managing casework requests to a centralized congressional liaison office, while others assign that responsibility to regional offices and staff that are empowered to work directly with caseworkers located in members’ state or district offices.

Technology: Some agencies continue to use ad hoc, legacy systems to receive, process, and respond to casework requests, while others employ new technologies like internal electronic case management systems⁴ and public-facing, web-based portals⁵ to receive, process, and respond to casework requests in a more accurate, efficient, transparent, and timely manner.

Procedures: Many agencies have developed standard operating procedures (SOPs) for managing casework requests and made them available to caseworkers and the public. These SOPs vary widely in their content, scope, and level of detail. Some agencies have also produced handbooks and other informational materials like flowcharts and plain-language summaries of their SOPs to educate and assist caseworkers.

Agencies are also subject to differing legal requirements that affect when, how, and what agency personnel can communicate to congressional caseworkers in responding to a casework request. These legal requirements, including the Privacy Act of 1974 and the Health Insurance Portability and Accountability Act of 1996 typically bar agencies from sharing records or information that contain protected or personally identifiable information with congressional caseworkers unless the constituent provides an executed expression of consent.⁶

Recognizing the unique and important role that constituent services play in agency-congressional relations and congressional oversight of federal programs, this Recommendation offers best practices to help agencies receive, process, and respond to congressional casework requests in an accurate, efficient, transparent, and timely manner. Of course, agencies differ with respect to the volume of casework requests they receive, the communities they serve, their operational needs, their statutory requirements, and the resources available to them. This Recommendation recognizes that when adopting or reviewing practices for receiving, processing, and responding to casework requests and interacting with congressional caseworkers, agencies may need to tailor these best practices to their unique circumstances.

Recommendation

Adopting Standard Operating Procedures

1. Agencies, especially those that receive a large volume of congressional casework requests, should develop standard operating procedures (SOPs) for tracking and managing such requests. Topics that SOPs should address include, as appropriate:

a. The agency office(s) or title(s) of personnel responsible for receiving, processing, and responding to congressional casework requests and interacting with congressional caseworkers, and the responsibilities of such office(s) or personnel;

b. The procedure by which congressional caseworkers should submit casework requests to the agency, including releases, waivers, or other documentation required by law;

c. The procedure by which agency personnel receive, process, and respond to requests, including: (i) intra-agency assignments of responsibility for the preparation, review, and approval of draft responses; (ii) constraints on agency personnel’s ability to provide information in response to a casework request; (iii) circumstances in which a casework request should be elevated for review by program or agency leadership; and (iv) the process by which agency personnel responsible for handling casework requests communicate with other agency personnel, including ombuds, when working to resolve a casework request, consistent with ex parte rules;

d. The agency’s use of electronic case management or other systems employed for managing casework requests and status updates, including the use of a trackable

unique identifier such as a docket number or case number (see Paragraph 6);

e. The agency’s procedures for monitoring the progress of responses to each casework request (see Paragraphs 10–11);

f. The major legal requirements, if any, that may restrict the agency’s ability to provide information to a congressional caseworker;

g. The types of communications that the agency provides to congressional caseworkers upon receiving a casework request (e.g., a notice acknowledging receipt), while processing a request (e.g., periodic status updates), and in responding to a request (e.g., a letter, email, or other communication that explains action taken by the agency to resolve the request);

h. Circumstances in which agency personnel will prioritize certain casework requests, including on a temporary basis to address emergencies, and how the agency’s processing of prioritized requests differs from its handling of non-prioritized requests;

i. The kinds of assistance or relief that the agency can and cannot provide in response to a casework request; and

j. Performance goals and measures for responding to casework requests (see Paragraph 9).

2. Agencies should make their SOPs on matters described in Paragraphs 1(a)–1(i) publicly available on their websites as a single, consolidated document along with plain-language materials that succinctly summarize them.

3. Agencies should provide regular training designed for both new and experienced agency personnel involved in receiving, processing, and responding to congressional casework requests to ensure their familiarity and compliance with agency SOPs.

Managing Casework Requests

4. Agencies should not automatically close out incoming casework requests that do not include information or documentation required for the request to be processed. Instead, agency personnel should notify congressional caseworkers that their submissions are incomplete and cooperate with the congressional caseworkers’ efforts to remedy the deficiency.

5. When agencies complete a casework request, they should provide written notice to the congressional caseworker or office, unless the caseworker or office has indicated that no written response is necessary.

Using Technology To Streamline Request Management and Resolution

6. Consistent with their resources, agencies that receive a large volume of congressional casework requests should adopt systems, such as electronic case management systems and web-based portals, to receive, process, and respond to requests in an accurate, efficient, transparent, and timely manner. Such systems should allow agency personnel to receive, process, and respond to casework requests consistent with established SOPs and allow managers to monitor the status of requests and evaluate key performance goals and measures.

7. When considering adoption or development of an electronic case management system or web-based portal,

² Many agencies provide avenues for members of the public to seek assistance or redress of grievances directly from the agency, such as through agency ombuds. See Admin. Conf. of the U.S., Recommendation 2016–5, *The Use of Ombuds in Federal Agencies*, 81 FR 94316 (Dec. 23, 2016).

³ See Sean J. Kealy, Congressional Constituent Service Inquiries 20 (June 5, 2024) (report to the Admin. Conf. of the U.S.).

⁴ Cf. Admin. Conf. of the U.S., Recommendation 2018–3, *Electronic Case Management in Federal Administrative Adjudication*, 83 FR 30686 (June 29, 2018).

⁵ Cf. Admin. Conf. of the U.S., Recommendation 2023–4, *Online Process in Agency Adjudication*, 88 FR 42682 (July 3, 2023).

⁶ See Kealy *supra* note 3, at 11–12.

agencies should consult with similarly situated agencies or units with particular expertise that may be able to share lessons learned during the adoption or development of similar systems.

8. In developing and modifying electronic case management systems and web-based portals, agencies should solicit feedback and suggestions for improvement from agency managers and personnel and, as appropriate, congressional caseworkers.

Measuring Agency Performance

9. Agencies should adopt performance goals for processing congressional casework requests and, for each goal, objective measures that use data collected consistent with Paragraph 10 to evaluate whether agency personnel are processing and responding to congressional casework requests successfully.

10. Agencies should collect data (to the extent possible, in a structured format) to allow managers to track and evaluate, as applicable:

- a. Processing times for casework requests;
- b. The congressional offices or caseworkers from which requests originate;
- c. Agency actions taken in response to casework requests;
- d. The nature, timing, and substance of communications between agency personnel and members of Congress and their caseworkers regarding specific casework requests;
- e. The frequency with which members of Congress and their caseworkers resubmit the same request, for example, because the agency prematurely closed a previous request without fully responding to the caseworker's inquiry, and the reason(s) for the resubmission;
- f. Training and other assistance that agency personnel provide to members of Congress and their caseworkers regarding casework generally;
- g. The identities and roles of agency personnel who work on casework requests; and
- h. Any other data the agency determines to be helpful in assessing the performance of their processes for receiving, processing, and responding to casework requests.

11. Agencies should evaluate on an ongoing basis whether they are meeting performance goals for processing congressional casework requests and, as appropriate, identify internal or external factors affecting their performance, identify opportunities for improvement, and predict future resource needs.

12. Agencies periodically should reassess performance goals and measures, and update them as needed, to ensure that they continue to serve as accurate indicators of good performance consistent with available resources, agency priorities, and congressional expectations. Additionally, agencies periodically should reassess their data collection practices and update them as needed to ensure managers can track and evaluate performance accurately over time.

13. Senior agency officials regularly should consider whether issues raised in congressional casework requests indicate broader policy issues or procedural hurdles

facing members of the public which the agency should address.

Communicating Effectively With Congress

14. Agencies should foster strong working relationships with congressional caseworkers and maintain open lines of communication to provide information to and receive input from caseworkers on agency procedures and facilitate efficient resolution of casework requests. Options for fostering such relationships include:

- a. Providing a point of contact to whom caseworkers can direct questions about individual casework requests or casework generally;
- b. Maintaining a centralized web page on the agency's website, consistent with Paragraph 2, where caseworkers can access the agency's SOPs; any plain language materials that succinctly summarize the agency's SOPs; and any releases, waivers, or other documentation that caseworkers must submit with requests;
- c. Providing training or other events—in person in Washington, DC, or regionally, or online in a live or pre-recorded format—through which agency personnel can share information with congressional caseworkers about the agency's procedures for receiving, processing, and responding to congressional casework requests (and, for agencies that frequently receive a high volume of casework requests, holding these events regularly and either in person or live online, to the extent practicable, in a manner that facilitates receipt of user experience feedback);
- d. Participating in training or other casework-focused events organized by other agencies and congressional offices, including the Office of the Chief Administrative Officer of the House of Representatives and the Senate's Office of Education and Training; and
- e. Organizing periodic, informal meetings with congressional offices and caseworkers with whom the agency regularly interacts to answer questions.

15. Agencies periodically should solicit input and user experience-related feedback from congressional caseworkers on the timeliness and accuracy of agencies' responses to casework requests.

16. When communicating with congressional caseworkers in the course of receiving, processing, or responding to casework requests, agencies should ensure that each communication identifies, as appropriate, any applicable legal constraints on the agency's ability to provide the information or assistance requested.

17. Congress should consider directing its training or administrative offices, such as the Office of the Chief Administrative Officer of the House of Representatives and the Senate's Office of Education and Training, to create a web page that consolidates links to agencies' SOPs in one place for ready access by congressional caseworkers. Agencies should cooperate with any such effort, including by alerting the designated offices to any changes to the web page at which their SOPs may be accessed.

[FR Doc. 2024-14981 Filed 7-8-24; 8:45 am]

BILLING CODE 6110-01-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods from July 1, 2024 Through June 30, 2025

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the national average value of donated foods or, where applicable, cash in lieu of donated foods, to be provided in school year 2025 (July 1, 2024 through June 30, 2025) for each lunch served by schools participating in the National School Lunch Program (NSLP), and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program (CACFP).

DATES: Implementation date: July 1, 2024.

FOR FURTHER INFORMATION CONTACT:

Ruth Decosse, Program Analyst, Policy Branch, SNAS Policy Division, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314, or telephone 703-305-2746.

SUPPLEMENTARY INFORMATION: These programs are located in the Assistance Listings under Nos. 10.555 and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act. This notice was reviewed by the Office of Management and Budget under Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

National Average Minimum Value of Donated Foods for the Period July 1, 2024 Through June 30, 2025

This notice implements mandatory provisions of sections 6(c) and 17(h)(1)(B) of the Richard B. Russell National School Lunch Act (the Act) (42 U.S.C. 1755(c) and 1766(h)(1)(B)). Section 6(c)(1)(A) of the Act establishes

the national average value of donated food assistance to be given to States for each lunch served in the NSLP at 11.00 cents per meal. Pursuant to section 6(c)(1)(B), this amount is subject to annual adjustments on July 1 of each year to reflect changes in a three-month average value of the Producer Price Index for Foods Used in Schools and Institutions for March, April, and May each year (Price Index). Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in the CACFP. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under the NSLP (7 CFR part 210) and per lunch and supper under the CACFP (7 CFR part 226) shall be 30.00 cents for the period July 1, 2024 through June 30, 2025.

The Price Index is computed using five major food components in the Bureau of Labor Statistics Producer Price Index (cereal and bakery products; meats, poultry, and fish; dairy; processed fruits and vegetables; and fats and oils). Each component is weighted using the relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April, and May each year. The three-month average of the Price Index increased by 1.74 percent from 259.15 for March, April, and May of 2023 as previously published in the **Federal Register**, to 263.66 for the same three months in 2024. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 2024 through June 30, 2025 will be 30.00 cents per meal. This is an increase of one-half ($\frac{1}{2}$) cents from the school year 2024 (July 1, 2023 through June 30, 2024) rate.

Authority: Sections 6(c)(1)(A) and (B), 6(e)(1), and 17(h)(1)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)(1)(A) and (B) and (e)(1), and 1766(h)(1)(B)).

Cynthia Long,

Administrator, Food and Nutrition Service.

[FR Doc. 2024–15031 Filed 7–8–24; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Census Bureau

[Docket Number: 240613–0160]

X–RIN 0607–XC076

Establishment of the 2030 Census Redistricting Data Program

AGENCY: Census Bureau, Department of Commerce

ACTION: Notice of program.

SUMMARY: This notice announces and seeks comments on the establishment of the 2030 Census Redistricting Data program. Required by law, the program provides the States the opportunity to specify the geographic areas for which they wish to receive 2030 Census population totals for the purpose of reapportionment and redistricting.

DATES: Comments on this notice are due by August 8, 2024. The program is expected to begin with the solicitation of official liaisons from the states in early 2025.

ADDRESSES: Comments may be submitted by either of the following methods:

- *Electronic submission:* Submit electronic public comments via the Federal eRulemaking Portal.
 1. Go to www.regulations.gov and enter Docket Number USBC–2024–0016 in the search field.
 2. Click the “Comment Now!” icon and complete the required fields.
 3. Enter or attach your comments.
- *By email:* Comments in electronic form may also be sent to rdo@census.gov.

All comments responding to this document will be a matter of public record. Relevant comments will generally be available on the Federal eRulemaking Portal at <https://www.Regulations.gov>.

The Census Bureau will not accept comments accompanied by a request that part or all of the material be treated confidentially for any reason. Therefore, do not submit confidential business information or otherwise sensitive, protected, or personal information, such as account numbers, Social Security numbers, or names of other individuals.

FOR FURTHER INFORMATION CONTACT: James Whitehorse—Chief, Redistricting and Voting Rights Data Office, c/o Census ADDC Mailbox, U.S. Census Bureau, 4600 Silver Hill Road, Washington, DC 20233 or by email to rdo@census.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of title 13, section 141(c) of the United States Code (U.S.C.), the

Secretary of Commerce (Secretary) is required to provide the “officers or public bodies having initial responsibility for the legislative apportionment or districting of each state” with the opportunity to specify geographic areas (e.g., census tabulation blocks, voting districts) for which they wish to receive decennial census population counts for the purpose of reapportionment or redistricting. The same statute requires the Secretary to furnish the state officials or their designees with population counts for standard census tabulation areas (e.g., state, congressional district, state legislative district, American Indian area, county, city, town, census tract, census block group, and census tabulation block) and voting districts (if provided by the state) by April 1 of the year following the decennial census. The Secretary has delegated these responsibilities to the Director of the Census Bureau (Director).

In accordance with the provisions of 13 U.S.C. 141(c), via this notice the Director announces the establishment of the 2030 Census Redistricting Data Program (RDP). In early 2025, the Census Bureau plans to invite the executive officer and the officers or public bodies having initial responsibility for legislative reapportionment and redistricting in each state to agree on and jointly identify a non-partisan liaison(s) who will work directly with the Census Bureau on the RDP. Once these liaisons are established, the Census Bureau will communicate to each state through their non-partisan liaison(s) the specific requirements of their participation.

Under 13 U.S.C. 141(c), RDP participation is voluntary. However, if states choose not to participate, the Census Bureau cannot ensure that the 2030 Census tabulation geography will support the redistricting needs of those states. The Census Bureau is proposing to structure the 2030 RDP into five phases, similar to how the program was structured for the 2020 Census.

Phase 1: Block Boundary Suggestion Project (BBSP)

In late 2025, the Census Bureau plans to formally announce the commencement of Phase 1: Block Boundary Suggestion Project (BBSP) through a **Federal Register** notice. The purpose of the BBSP is to afford states the opportunity to identify non-standard features often used as electoral boundaries (such as power lines, property lines, or streams) that could be used in conjunction with more traditional features (such as street centerlines) as census tabulation block

boundaries. The state liaison can identify and suggest that some of these features be used as 2030 census tabulation block boundaries, resulting in more meaningful tabulation block data for the state. The liaison may work with local officials, including county election officers and others, to ensure local geography is represented in the 2030 census tabulation block inventory. In addition, the liaison may make suggestions for features not desirable as census tabulation block boundaries.

Beginning in early 2026, the Census Bureau plans to provide to states that choose to participate in Phase 1 the guidelines and training for providing their suggestions for the 2030 census tabulation block boundaries as well as their suggestions for exclusion of line segments for consideration in the final 2030 census tabulation block boundary inventory. States will also have the opportunity to review legal boundaries such as incorporated place, American Indian area, and county boundaries, in coordination with the annual Boundary and Annexation Survey (BAS) program. Incorporating the opportunity for states to review legal boundaries was successfully implemented for the first time in the 2020 RDP and proved valuable as these legal boundaries also become census tabulation block boundaries. The Census Bureau plans to process all tabulation block boundary suggestions and provide state liaisons the opportunity to verify them in early 2027.

Phase 2: Voting District Project (VTDP)

In late 2027, the Census Bureau plans to formally announce the commencement of Phase 2: Voting District Project (VTDP) through a **Federal Register** notice. The VTDP will provide the state liaisons the opportunity to submit and verify their voting districts (a generic term used to represent areas that administer elections such as precincts, election districts, and wards) to the Census Bureau for inclusion in the 2030 Census Redistricting Data (Pub. L. 94–171) products (tabulated data and geographic products).

Beginning in early 2028, the Census Bureau plans to begin the initial voting district update cycle, providing to states that choose to participate guidelines and training for submitting their voting district boundaries. The Census Bureau will process the updates and provide states two opportunities to verify the updates were processed correctly. The first verification cycle is planned for early 2029. The second verification cycle, planned for early 2030, will only be available to states that participated in

the initial update cycle or the first verification cycle. State liaisons will also continue to have the opportunity to make census tabulation block boundary suggestions and to review legal boundaries such as incorporated place, American Indian area, and county boundaries in coordination with the annual BAS during the initial update cycle and the first verification cycle.

Phase 3: Delivery of the 2030 Census Redistricting Data

In accordance with 13 U.S.C. 141(c), the Director will furnish the Governor, state legislative leaders of both the majority and minority parties, and any other sitting “officers or public bodies having initial responsibility for the legislative apportionment or districting of each state” with 2030 Census population counts for standard census tabulation areas (e.g., state, congressional district, state legislative district, American Indian area, county, city, town, census tract, census block group, and census tabulation block) regardless of whether or not a state participates in Phases 1 or 2. The Director will also provide 2030 Census population counts for voting districts to any state that participated in Phase 2. Delivery is expected to occur prior to or alongside the public release of the 2030 Census Redistricting Data (Pub. L. 94–171) Summary File, no later than April 1, 2031.

Phase 4: Collection of Post-2030 Census Congressional and State Legislative District Plans

Beginning in 2031, the Census Bureau plans to solicit from each state the newly drawn legislative and congressional district plans based on the 2030 census results and compile population, housing and other data for those new districts. This effort is expected to occur every two years in advance of the 2040 Census in order to update these district boundaries with new or changed plans. A verification phase is planned to occur with each two-year update cycle.

Phase 5: Review of the 2030 Census Redistricting Data Program and Recommendations for the 2040 Census Redistricting Data Program

As the final phase of the 2030 Census Redistricting Data Program, the Census Bureau will work with the states to conduct a thorough review of the program. The intent of this review, and the final report that results, is to provide guidance to the Secretary and the Director in planning the 2040 Census Redistricting Data Program.

Please address questions concerning any aspect of the 2030 RDP to the person identified in the contact section of this notice.

Robert L. Santos, Director, Census Bureau, approved the publication of this Notice in the **Federal Register**.

Dated: July 2, 2024.

Shannon Wink,

*Program Analyst, Policy Coordination Office,
U.S. Census Bureau.*

[FR Doc. 2024–14962 Filed 7–8–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on July 24, 2024, 9:00 a.m., Eastern Daylight Time, in the Herbert C. Hoover Building, Room 3884, 1401 Constitution Avenue NW, Washington, DC (enter through Main Entrance on 14th Street between Constitution and Pennsylvania Avenues). This meeting will be hybrid. The Committee advises the Department of Commerce (Department) with respect to the following issues: (1) technical specifications and policy issues relating to those specifications that are of concern to the Department; (2) worldwide availability of products and systems, including quantity and quality, and actual utilization of production technology; (3) licensing procedures that affect the level of export controls applicable to any commodities, software, or technology; (4) revisions of the Commerce Control List, including proposed revisions of multilateral controls in which the United States participates; (5) the issuance of regulations; and (6) any other matters relating to actions designed to carry out the policy set forth in section 1752 of Export Control Reform Act. The purpose of the meeting is to have Committee members and U.S. Government representatives mutually review updated technical data and policy-driving information that has been gathered.

Agenda

Open Session

1. Welcome and Introductions
2. Working Group Reports
3. Public Comments
4. Open/Closed Business
5. Wassenaar Proposal Ideas for 2025
6. Industry Presentation: HPC & AI Benchmarks

Closed Session

7. Discussion of matters determined to be exempt from the open meeting and public participation requirements found in sections 1009(a)(1) and 1009(a)(3) of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001–1014). The exemption is authorized by section 1009(d) of the FACA, which permits the closure of advisory committee meetings, or portions thereof, if the head of the agency to which the advisory committee reports determines such meetings may be closed to the public in accordance with subsection (c) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). In this case, the applicable provisions of 5 U.S.C. 552b(c) are subsection 552b(c)(4), which permits closure to protect trade secrets and commercial or financial information that is privileged or confidential, and subsection 552b(c)(9)(B), which permits closure to protect information that would be likely to significantly frustrate implementation of a proposed agency action were it to be disclosed prematurely. The closed session of the meeting will involve committee discussions and guidance regarding U.S. Government strategies and policies.

The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer at Yvette.Springer@bis.doc.gov, no later than July 17, 2024.

A limited number of seats will be available for members of the public to attend the open session in person. Reservations are not accepted.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Yvette Springer no later than Tuesday, July 17, 2024, so that appropriate arrangements can be made.

To the extent it permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of materials to the Committee members, the Committee suggests that members of the public forward their materials prior to the meeting to Ms. Springer via email. Material submitted by the public will be made public and therefore should not contain confidential information. Meeting materials from the public session will be accessible via the Technical Advisory Committee (TAC) site at <https://tac.bis.gov>, within 30-days after the meeting.

The Deputy Assistant Secretary for Administration Performing the non-exclusive functions and duties of the Chief Financial Officer, with the

concurrence of the delegate of the General Counsel, formally determined on February 15, 2024, pursuant to 5 U.S.C. 1009(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. 1009(a)(1) and 1009(a)(3). The remaining portions of the meeting will be open to the public.

Meeting cancellation: If the meeting is cancelled, a cancellation notice will be posted on the TAC website at <https://tac.bis.doc.gov>.

For more information, contact Ms. Springer via email.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2024–15017 Filed 7–8–24; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 240702–0183]

Revisions to the Fee Schedule for the Data Privacy Framework Program

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of revisions; request for public comments.

SUMMARY: Consistent with the guidelines in OMB Circular A–25, the U.S. Department of Commerce’s International Trade Administration (ITA) is revising the fee schedule that was last updated on April 12, 2017. This notice revises the Privacy Shield program fee schedule to reflect the change in the name of the program from the “Privacy Shield” program to the “Data Privacy Framework” program and to amend the fees. This is to support the operation of the EU–U.S. DPF, the UK Extension to the EU–U.S. DPF, and the Swiss–U.S. DPF (collectively, the DPF program).

DATES: The revisions to the fee schedule will become effective 30 days after the final fee schedule is published. Comments must be received by August 7th, 2024.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal at www.Regulations.gov. The identification number is ITA–2024–0001.

- Postal Mail/Commercial Delivery to Isabella Carlton, Department of Commerce, International Trade Administration, Room 11018, 1401

Constitution Avenue NW, Washington, DC, and reference “Revisions to the Fee Schedule for the Data Privacy Framework Program” in the subject line.

Instructions: You must submit comments by one of the above methods to ensure that the comments are received and considered. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. ITA will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only. Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/> (<http://www.regulations.gov/>) ITA–2024–0001.

More information regarding the DPF program can be found at <https://www.dataprivacyframework.gov/Program-Overview>.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information regarding the DPF program should be directed to Isabella Carlton, Department of Commerce, International Trade Administration, Room 11018, 1401 Constitution Avenue NW, Washington, DC, tel. (202) 482–1512 or via email at dpf.program@trade.gov. Additional information on ITA fees is available at trade.gov/fees.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 2023, the U.S. Department of Commerce (DOC) launched the Data Privacy Framework (DPF) program. The EU–U.S. Data Privacy Framework (EU–U.S. DPF), UK Extension to the EU–U.S. DPF, and Swiss–U.S. Data Privacy Framework (Swiss–U.S. DPF) were respectively developed by the DOC and the European Commission, UK Government, and Swiss Federal Administration to provide U.S. organizations with reliable mechanisms for personal data transfers to the United States from the EU, UK, and Switzerland while ensuring data protection that is consistent with EU, UK, and Swiss law. The EU–U.S. DPF amends the privacy principles that

organizations adhered to under the EU–U.S. Privacy Shield Framework as the “EU–U.S. Data Privacy Framework Principles” (EU–U.S. DPF Principles), and the Swiss–U.S. DPF amends the privacy principles that organizations adhered to under the Swiss–U.S. Privacy Shield Framework as the “Swiss–U.S. Data Privacy Framework Principles” (Swiss–U.S. DPF Principles). For more detailed information on the DPF program, please see <https://www.dataprivacyframework.gov/Program-Overview>.

Consistent with the guidelines in OMB Circular A–25, Federal agencies are responsible for implementing cost recovery program fees. The role of ITA is to strengthen the competitiveness of U.S. industry, promote trade and investment, and ensure fair trade through the rigorous enforcement of U.S. trade laws and agreements. ITA works to promote privacy policy frameworks to facilitate the trusted flow of data across borders with strong privacy protections, which in turn supports international trade.

The U.S., EU, UK, and Switzerland share a commitment to enhancing privacy protection, the rule of law, and a recognition of the importance of transatlantic data flows to our respective citizens, economies, and societies, but have different legal systems and take different approaches to doing so. Given those differences, the DOC developed the EU–U.S. DPF, the UK Extension to the EU–U.S. DPF, and the Swiss–U.S. DPF in consultation with the European Commission, the UK Government, the Swiss Federal Administration, industry, and other stakeholders. These arrangements were respectively developed to provide U.S. organizations reliable mechanisms for personal data transfers to the U.S. from the EU, UK, and Switzerland that are consistent with EU, UK, and Swiss law.

The DOC has issued the EU–U.S. DPF Principles and the Swiss–U.S. DPF Principles, including the respective sets of Supplemental Principles (collectively, the Principles) and Annex I to the Principles, as well as the UK Extension to the EU–U.S. DPF under its statutory authority to foster, promote, and develop international commerce (15 U.S.C. 1512).

To participate in the EU–U.S. DPF and, as applicable, the UK Extension to the EU–U.S. DPF, and/or the Swiss–U.S. DPF an organization must: (1) be subject to the investigatory and enforcement powers of the Federal Trade Commission (FTC), the Department of Transportation (DOT), or another statutory body that will effectively ensure compliance with the Principles;

(2) publicly declare its commitment to comply with the Principles; (3) publicly disclose its privacy policies in line with the Principles; and (4) fully implement the Principles.

While the decision by an organization to self-certify its compliance and to participate in the DPF is voluntary; effective compliance is compulsory: organizations that self-certify to the DOC and publicly declare their commitment to adhere to the Principles must comply fully with the Principles. Organizations that only wish to self-certify their compliance pursuant to the EU–U.S. DPF and/or the Swiss–U.S. DPF may do so; however, organizations that wish to participate in the UK Extension to the EU–U.S. DPF must participate in the EU–U.S. DPF. Such organizations’ commitment to comply with the Principles with regard to transfers of personal data from the EU and, as applicable, the UK, and/or Switzerland must be reflected in their self-certification submissions to the DOC, and in their privacy policies. An organization’s failure to comply with the Principles after its self-certification is enforceable: (1) by the FTC under Section 5 of the Federal Trade Commission (FTC) Act prohibiting unfair or deceptive acts in or affecting commerce (15 U.S.C. 45); (2) by the DOT under 49 U.S.C. 41712 prohibiting a carrier or ticket agent from engaging in an unfair or deceptive practice in air transportation or the sale of air transportation; or (3) under other laws or regulations prohibiting such acts.

U.S. organizations considering self-certifying their compliance pursuant to the EU–U.S. DPF and, as applicable, the UK Extension to the EU–U.S. DPF, and/or the Swiss–U.S. DPF should review the requirements in their entirety, including the Principles and associated documents available in full at www.dataprivacyframework.gov.

Revisions to the Fee Schedule

ITA initially implemented a cost recovery program to support the operation of the EU–U.S. Privacy Shield Framework and the Swiss–U.S. Privacy Shield Frameworks (collectively, the Privacy Shield program) and is revising that fee schedule to support the operation of the DPF program. The cost recovery program will support the administration and supervision of the DPF program and support services related to the DPF program, including education and outreach. The revisions to the fee schedule will become effective 30 days after the final fee schedule is published.

The Cost Recovery Fee Schedule for the EU–U.S. Privacy Shield Framework,

published September 30, 2016 (81 FR 67293), describes the fees implemented by ITA to cover the administration and supervision of the EU–U.S. Privacy Shield Framework. The first amendment to the Cost Recovery Fee Schedule for the EU–U.S. Privacy Shield Framework, published April 4, 2017 (82 FR 16375), describes the additional fees implemented by ITA to cover the administration and supervision of the Swiss–U.S. Privacy Shield Framework. Under this revision to the fee schedule, organizations that opt to self-certify only for the EU–U.S. DPF, only the EU–U.S. DPF and the UK Extension to the EU–U.S. DPF, or only the Swiss–U.S. DPF will pay a single fee when initially self-certifying or re-certifying. Organizations that opt to self-certify for an additional framework will pay an additional 50 percent of that single fee when self-certifying or re-certifying for the additional framework, reflecting the efficiency savings in administering the DPF program for organizations that participate in multiple parts of the DPF program. As organizations that wish to participate in the UK Extension to the EU–U.S. DPF must participate in the EU–U.S. DPF, the annual fee that such organizations are required to pay to ITA to participate in the EU–U.S. DPF currently covers both the EU–U.S. DPF and the UK Extension to the EU–U.S. DPF.

These efficiency savings are maximized if organizations self-certify to multiple parts of the DPF program simultaneously, reducing the required staff time and resources for reviewing materials.

In addition, organizations that participate in the EU–U.S. DPF and, as applicable, the UK Extension to the EU–U.S. DPF and/or the Swiss–U.S. DPF may adjust their annual re-certification due date by re-certifying early (*i.e.*, before the applicable due date) to the relevant part(s) of the DPF program.

Although an organization may adjust its annual re-certification due date by re-certifying early, the re-certification due date would apply to all parts of the DPF program in which it participates (*i.e.*, re-certification to the relevant part(s) of the DPF program is synchronized). For example, if an organization initially self-certified exclusively to and was placed on the Data Privacy Framework List with regard to the EU–U.S. DPF, and then several months later self-certified to and was placed on the Data Privacy Framework List with regard to the Swiss–U.S. DPF, the organization’s next re-certification to both of those parts of the DPF program would be due by the same date.

Additionally, a fixed annual fee of \$260 will be charged per applicable framework for organizations that withdraw from the relevant part(s) of the DPF program, retain personal data that they received in reliance on their participation in the relevant part(s) of the DPF program, continue to apply the Principles to such data, and affirm to

ITA on an annual basis their commitment to apply the Principles to such data. This fee has been set to cover staff costs for reviewing the “Post-Withdrawal, Annual Affirmation Questionnaire”, which must be submitted by organizations that have chosen the aforementioned option when withdrawing from the relevant part(s) of

the program, as well as the necessary website infrastructure to facilitate submission of the proper documents. Additionally, this fee is set to be less than any organization would be required to pay for re-certification. The fee schedule is set forth below:

REVISED ANNUAL FEE SCHEDULE FOR THE DPF PROGRAM

Organization's annual revenue	A single framework	Both frameworks
Post-withdrawal, annual affirmation fee	\$260	\$520
0 to 5 million	260	390
Over 5 million to 25 million	750	1,125
Over 25 million to 500 million	1,600	2,400
Over 500 million to 5 billion	4,130	6,195
Over 5 billion	5,530	8,295

For purposes of the annual fee schedule described above:

- “A single framework” could refer to any of the following: only the EU–U.S. DPF; only the EU–U.S. DPF and the UK Extension to the EU–U.S. DPF; or only the Swiss-U.S. DPF.
- “Both frameworks” could refer to any of the following: the EU–U.S. DPF, the UK Extension to the EU–U.S. DPF, and the Swiss-U.S. DPF; or only the EU–U.S. DPF and the Swiss-U.S. DPF.

Organizations will have additional direct costs associated with participating in the DPF program. For example, organizations must provide a readily available independent recourse mechanism to hear individual complaints at no cost to the individual. Furthermore, organizations are required to make contributions in connection with the arbitral model, as described in Annex I to the Principles.

Method for Determining Fees

ITA collects, retains, and expends user fees pursuant to delegated authority under the Mutual Educational and Cultural Exchange Act as authorized in its annual appropriations acts. The EU–U.S. DPF, the UK Extension to the EU–U.S. DPF, and the Swiss-U.S. DPF were developed to facilitate transatlantic commerce by providing U.S. organizations with reliable mechanisms for personal data transfers to the United States from the EU/European Economic Area, UK, and Switzerland. The Data Privacy Framework program operates in a way that provides strong privacy protection as well as a more effective and efficient service to participants at a lower cost than other options, including standard contractual clauses or binding corporate rules.

Fees are set by taking into account the operational costs borne by ITA to administer and supervise the Data Privacy Framework program. The DPF program requires a significant commitment of resources and staff.

These costs include broad programmatic costs to run the program as well as costs specific to EU–U.S. DPF, the UK Extension to the EU–U.S. DPF, and the Swiss-U.S. DPF. The DPF program includes commitments from ITA to:

- Maintain, upgrade, and update a DPF program website, including maintaining the Data Privacy Framework List (*i.e.*, the authoritative list of U.S. organizations that have self-certified to the DOC, as represented by ITA, and declared their commitment to adhere to the Principles;
- Verify self-certification requirements submitted by organizations to participate in the DPF program;
- Follow up with organizations that have been removed from the Data Privacy Framework List and ensure, where applicable, that questionnaires are correctly filed and processed;
- Search for and address false claims of participation;
- Conduct periodic compliance reviews and assessments of the program;
- Provide information regarding the program to targeted audiences;
- Increase cooperation with European data protection authorities;
- Facilitate resolution of complaints about non-compliance;
- Hold periodic meetings with the European Commission, the UK government, the Swiss government, and other authorities to review the program; and
- Provide the EU, UK, and Switzerland with updates on laws relevant to the DPF program.

In setting these revised DPF program fees, ITA determined that the services provided offer special benefits to an identifiable recipient beyond those that accrue to the general public. ITA calculated the actual cost of providing its services in order to provide a basis for setting each fee. This actual cost incorporates direct and indirect costs, including operations and maintenance, overhead, and charges for the use of capital facilities. ITA also took into account additional factors, including inflation, adequacy of cost recovery, affordability, and costs associated with alternative options available to U.S. organizations for the receipt of personal data from the EU, the UK, and Switzerland. Furthermore, ITA considered the cost-savings and efficiencies gained in staff hours through simultaneous review of self-certifications for the EU–U.S. DPF, the UK Extension to the EU–U.S. DPF, and the Swiss-U.S. DPF. This analysis balanced these cost savings with projected expenses, including, but not limited to, website development, further negotiations with the EU, the UK, and Switzerland, periodic reviews, certification reviews, and facilitating complaint resolutions.

ITA will continue to use the established five-tiered fee schedule (see 82 FR 16375) that promoted participation of small organizations in the Privacy Shield program, while amending the fees at each tier to account for increased program administration costs. A multiple-tiered fee schedule allows ITA to offer organizations with lower revenue a lower fee. In setting the five tiers, ITA considered, in conjunction with the factors mentioned above: (1) the Small Business Administration’s guidance on

identifying small and medium enterprises (SMEs) in various industries most likely to participate in the DPF program, such as computer services, software and information services; (2) the likelihood that small companies would be expected to receive less personal data and thereby use fewer government resources; and (3) the likelihood that companies with higher revenue would have more customers whose data they process, which would use more government resources dedicated to administering and overseeing the DPF program. For example, if a company holds more data, it could reasonably produce more questions and complaints from consumers and European data protection authorities (DPAs). ITA has committed to facilitating the resolution of individual complaints and to communicating with the FTC and the DPAs regarding consumer complaints. Lastly, the fee increases between the tiers are based in part on projected program costs and estimated participation levels among companies within each tier.

As noted above, the revisions to the fee schedule recoups the costs to ITA for operating and maintaining the DPF program. ITA has taken into account the efficiencies and economies of scale experienced when organizations participate in multiple Frameworks by providing a 50 percent discount off adding another framework program and requiring organizations to synchronize their re-certifications. The added cost of joining an additional framework program reflects the additional expenses incurred, including, but not limited to, for communications with DPAs and website infrastructure and development, as well as the additional costs of cooperating and communicating separately with the EU, UK, and Swiss representatives and governments.

The fee applied to organizations that withdraw from relevant part(s) of the DPF program, but that maintain data, is meant to cover the programmatic costs associated with ITA's processing of such organizations' annual affirmation of commitment to continue to apply the Principles to the personal data they received while participating in the relevant part(s) of the DPF program. The flat fee is based on the expectation that government resources required to process this annual affirmation will be similar for all companies, regardless of size.

Based on the information provided above, ITA believes that the revised DPF program cost recovery fee schedule is consistent with the objective of OMB Circular A-25 to "promote efficient

allocation of the nation's resources by establishing charges for special benefits provided to the recipient that are at least as great as the cost to the U.S. Government of providing the special benefits . . ." (OMB Circular A-25(5)(b)). ITA is providing the public with the opportunity to comment on the revisions to the fee schedule. ITA will then review all comments and publish the final fee schedule 30 days before the final fee schedule becomes effective. ITA administers and supervises the DPF program, including maintaining and making publicly available the Data Privacy Framework List, an authoritative list of U.S. organizations that have self-certified to the DOC and declared their commitment to adhere to the Principles pursuant to the EU-U.S. DPF and, as applicable, the UK Extension to the EU-U.S. DPF, and/or the Swiss-U.S. DPF.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA), ITA published proposed information collection as described in the EU-U.S. DPF, the UK Extension to the EU-U.S. DPF, and the Swiss-U.S. DPF for public notice and comment (88 FR 19067 and 88 FR 37509). The approved OMB Control Number for that information collection is 0625-0280 (expires 07/31/2026). That approval allows ITA to collect information from organizations in the United States, including information concerning their annual revenue, to enable such organizations to self-certify to the DOC. Such information collection is critical to ITA's administration and supervision of the DPF program, including its maintenance of the authoritative, public list of U.S. organizations that have self-certified to the DOC and declared their commitment to adhere to the Principles. The instant revisions to the DPF program cost recovery fee schedule do not impose any new information collection request (ICR) requirements or revise the current approved burden hours and administrative costs associated with the self-certification process under the approved OMB Control Number.

Dated: July 2, 2024.

Neema Guliani,

Deputy Assistant Secretary for Service, Industry & Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2024-14983 Filed 7-8-24; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-889]

Certain Quartz Surface Products From India: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2022-2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain quartz surface products (quartz surface products) from India are not being sold in the United States at below normal value during the period of review (POR), June 1, 2022, through May 31, 2023. Additionally, Commerce is rescinding this administrative review with respect to certain companies. We invite interested parties to comment on these preliminary results.

DATES: Applicable July 9, 2024.

FOR FURTHER INFORMATION CONTACT:

Laurel LaCivita or Anjali Mehindiratta, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4243 or (202) 482-9127, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 22, 2020, Commerce published the antidumping duty order on quartz surface products from India.¹ On June 1, 2023, we published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.² On August 3, 2023, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), Commerce initiated an administrative review of the *Order* covering 77 entities.³ On February 6, 2024, Commerce extended the deadline for the preliminary results until June 28, 2024.⁴

For a complete description of the events that followed the initiation of

¹ See *Certain Quartz Surface Products from India and Turkey: Antidumping Duty Orders*, 85 FR 37422 (June 22, 2020) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review and Join Annual Inquiry Service List*, 88 FR 35835 (June 1, 2023).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 51271 (August 3, 2023) (*Initiation Notice*).

⁴ See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated February 6, 2024.

this review, see the Preliminary Decision Memorandum.⁵ A list of topics discussed in the Preliminary Decision Memorandum is attached as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The products covered by this *Order* are quartz surface products. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.

Rescission of Review, In Part

As noted above, we initiated this review with respect to 77 companies.⁶ During the course of the review, we selected two mandatory respondents, which included three of the named companies.⁷ As a consequence, there are 74 companies upon which review was requested and which were not selected for individual examination.

Commerce received timely withdrawal requests with respect to 24 companies upon which we initiated the review within 90 days of the date of publication of the *Initiation Notice*. Therefore, Commerce is rescinding this review, in part, with respect to these 24 companies in accordance with 19 CFR 351.213(d)(1).⁸ In addition, pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an administrative review when

there are no reviewable suspended entries. Based on our analysis of U.S. Customs and Border Protection (CBP) information, 10 companies listed in the *Initiation Notice* had no entries of subject merchandise during the POR, including six for which timely withdrawals of requests for review were submitted and four for which no withdrawal requests were submitted. On May 6, 2024, we notified parties of our intent to rescind this administrative review with respect to the 10 companies that had no reviewable suspended entries during the POR.⁹ No party to the proceeding provided comments on our Intent to Rescind Memorandum. As a result, we are rescinding this review, in part, with respect to the four entities which had no entries in the POR and for which withdrawal requests were not previously received from all parties requesting review.¹⁰ Therefore, we are rescinding this review, in part, with respect to a total of 28 companies.¹¹

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. Export price was calculated in accordance with section 772 of the Act. Normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.

Rate for Non-Examined Companies

The Act and Commerce's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}."

⁹ See Memorandum, "Notice of Intent to Rescind Review, In Part," dated May 6, 2024 (Intent to Rescind Memorandum).

¹⁰ See Appendix II.

¹¹ Id.

In this administrative review, we preliminarily calculated dumping margins of zero percent for both Marudhar Rocks and PESL. Thus, in accordance with the expected method, we preliminarily assigned to the non-selected companies a zero percent rate, based on the rates calculated for the two mandatory respondents. As a consequence, if these results are unchanged in the final results of review, we will liquidate the entries of Marudhar, PESL and the non-selected companies without regard to antidumping duties.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following estimated weighted-average dumping margins exist for the period June 1, 2022, through May 31, 2023:

Producer/exporter	Weighted-average dumping margin (percent)
Pokarna Engineered Stone Limited	0.00
Marudhar Rocks International Pvt. Ltd./Marudhar Quartz Surface Private Limited	0.00
Non-Individually Examined Companies ¹²	0.00

¹² See Appendix III.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice, or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).¹³

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.¹⁴ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.¹⁵ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and, (2) a table of authorities.¹⁶

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total,

¹³ See 19 CFR 351.224(b).

¹⁴ See 19 CFR 351.309(c)(1)(ii).

¹⁵ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).

¹⁶ See 19 CFR 351.309(c)(2) and (d)(2).

⁵ See Memorandum, "Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order Quartz Surface Products from India; 2022–2023," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁶ See *Initiation Notice*. Commerce previously determined that Antique Marbonite Pvt Ltd., Prism Johnson Limited, and Shivam Enterprises are affiliated and treated these companies were as a single entity; thus, they were listed together in the *Initiation Notice*. See *Initiation Notice*, 88 FR at 51274. See also *Certain Quartz Surface Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 85 FR 25391 (May 1, 2020).

⁷ See Memorandum, "Respondent Selection," dated September 14, 2023. In the prior review, we treated Marudhar Rocks International Pvt. Ltd. and Marudhar Quartz Surface Private Limited as a single entity. See *Certain Quartz Surface Products from India: Final Results of Antidumping Duty Administrative Review, and Final Determination of No Shipments; 2021–2022*, 88 FR 80689 (November 20, 2023).

⁸ See Appendix II.

including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁷ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁸

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system within 30 days of publication of this notice.¹⁹ Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing at a time and location to be determined.²⁰ Parties should confirm by telephone the date, time, and location of the hearing no fewer than two days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP)

shall assess, antidumping duties on all appropriate entries covered by this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.²¹ Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

If the respective weighted-average dumping margins are above *de minimis* (*i.e.*, 0.50 percent) in the final results of this review, we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).²² If the respondent has not reported entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, 0.50 percent). Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.²³

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by the respondents for which they did not know that the

merchandise was destined for the United States, we will instruct CBP to liquidate entries not reviewed at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For the companies which were not selected for individual examination, we will instruct CBP to assess antidumping duties at an *ad valorem* assessment rate equal to the company-specific weighted-average dumping margin determined in these final results. For the companies for which the administrative review is rescinded, antidumping duties shall be assessed at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of the final results of the administrative review for all shipments of quartz surface products from India entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results, as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for each company listed above will be equal to the dumping margins established in the final results of this review, except if the ultimate rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rates will be zero; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the producer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 1.02 percent, the all-others rate established in the antidumping duty investigation.²⁴ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR

¹⁷ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁸ See APO and Service Procedures.

¹⁹ See 19 CFR 351.310(c).

²⁰ See 19 CFR 351.310.

²¹ See section 751(a)(2)(C) of the Act.

²² In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

²³ See section 751(a)(2)(C) of the Act.

²⁴ See *Order*, 85 FR at 37423.

351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(h)(2), and 19 CFR 351.221(b)(4).

Dated: June 28, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Rescission of Review, In Part
- V. Companies Not Selected for Individual Examination
- VI. Discussion of Methodology
- VII. Currency Conversion
- VIII. Recommendation

Appendix II—Companies Rescinded from Administrative Review

Companies for which all requests for review were timely withdrawn:

- 1 Advantis Quartz LLP
- 2 Chaitanya International Minerals LLP
- 3 Colors of Rainbow
- 4 EELQ Stone LLP
- 5 Geetanjali Quartz Pvt Ltd.
- 6 GS Exim
- 7 Haique Stones Inc.
- 8 INANI Marble and Industries Ltd.
- 9 Jyothi Quartz Surfaces
- 10 Krishna Sai Exports
- 11 Modern Surface Inc.
- 12 MQ surfaces Pvt Ltd.
- 13 Nice Quartz and Stones Pvt Ltd.
- 14 Paradigm Granite Pvt Ltd.
- 15 Pristine Quartz Pvt. Ltd.
- 16 Rudra Quartz LLP
- 17 Shivam Surface India LLP
- 18 Square Ft. Marble and granite
- 19 Stone Empire Pvt. Ltd.
- 20 SVG Exports Pvt Ltd.
- 21 Taanj Quartz Inc.
- 22 Tab Quartz
- 23 Trident Surface
- 24 Universall Granites

Companies reflecting no entries during the administrative review period and for which no comment was received in opposition to the Intent to Rescind Memorandum:

- 25 Amazoone Ceramics Ltd.
- 26 Pelican Grani Marmo Pvt. Ltd.
- 27 PM Quartz Surfaces Pvt Ltd.
- 28 RMC Readymix Porselano India Limited

Appendix III—Non-Individually Examined Companies Receiving a Review-Specific Rate

- 1 3HQ Surfaces Pvt. Ltd.
- 2 Antique Granito Shareholders Trust
- 3 Antique Marbonite Pvt Ltd; Prism Johnson Limited; Shivam Enterprises
- 4 Argil Ceramics
- 5 ARO Granite Industries Ltd.
- 6 ASI Industries Limited
- 7 Asian Granito India Ltd.
- 8 Baba Super Minerals Pvt Ltd.
- 9 Camrola Quartz Limited
- 10 Classic Marble Co Pvt Ltd.
- 11 Cuarzo
- 12 Divine Surfaces Private Limited
- 13 Divya Shakti Granites Ltd.
- 14 Divya Shakti Ltd.
- 15 Espirit Stones Pvt Ltd.
- 16 Evetis Stone Pvt Ltd.
- 17 Global Stones Pvt. Ltd.
- 18 Global Surfaces Ltd.
- 19 Glowstone Industries Pvt Ltd.
- 20 Hi Elite Quartz LLP
- 21 Imperiaal Granimarmo Pvt Ltd.
- 22 Indus Trade and Technology LLC
- 23 Internaational Stones India Pvt. Ltd.
- 24 Keros Stone LLP
- 25 Mahi Granites Pvt Ltd.
- 26 Malbros Marbles and Granites Industries
- 27 Mountmine Impex Pvt Ltd.
- 28 Pacific Industries Ltd.
- 29 Pacific Quartz Surfaces LLP
- 30 Paradigm Stone India Pvt Ltd.
- 31 Pelican Buildmat Pvt Ltd.
- 32 Pelican Quartz Stone
- 33 QuartzKraft LLP
- 34 Renshou Industries
- 35 Rocks Forever
- 36 Safayar Ceramics Pvt Ltd.
- 37 Satya Exports
- 38 Shanmukha Exports
- 39 Southern Rocks and Minerals Pvt Ltd.
- 40 Sunex Stones Pvt Ltd.
- 41 Tab India Granites Pvt. Ltd.
- 42 Universal Marketing Agencies Private Limited
- 43 Universal Quartz & Natural Stones Pvt Ltd.
- 44 Venkata Sri Balaji Quartz Surfaces

[FR Doc. 2024–14832 Filed 7–8–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–814]

Chlorinated Isocyanurates From Spain: Preliminary Results of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily

determines that sales of chlorinated isocyanurates (chlorinated isos) from Spain were not sold in the United States at less than normal value during the period of review (POR), June 1, 2022, through May 31, 2023. We invite interested parties to comment on these preliminary results.

DATES: Applicable July 9, 2024.

FOR FURTHER INFORMATION CONTACT:

Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

Based on a timely request for review, and in accordance with 19 CFR 351.221(c)(1)(i), Commerce initiated this administrative review of the antidumping duty order on chlorinated isos from Spain covering three companies, Ercros S.A. (Ercros), Industrias Quimicas Tamar S.L. (Industrias Quimicas Tamar), and Electroquimica de Hernani, S.A. (EHER).¹ On January 23, 2024, we limited the number of respondents for individual examination in this administrative review to Ercros and EHER.² We did not select Industrias Quimicas Tamar for individual examination, and this company remains subject to this administrative review. For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.³ On February 6, 2024, we extended the deadline for these preliminary results until no later than June 27, 2024.⁴

Scope of the Order⁵

The products covered by the *Order* are chlorinated isos, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. For a full description of the scope of the

¹ *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 51271 (August 3, 2023).

² *See* Memorandum, “Respondent Selection,” dated January 23, 2024.

³ *See* Memorandum, “Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Chlorinated Isocyanurates from Spain; 2022–2023,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ *See* Memorandum, “Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated February 6, 2024.

⁵ *See Chlorinated Isocyanurates from Spain: Notice of Antidumping Duty Order*, 70 FR 36562 (June 24, 2005) (*Order*).

order, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNotices/ListLayout.aspx>.

Rate for Non-Examined Companies

For the rate for non-selected companies in an administrative review, generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}."

Where the dumping margin for individually examined respondents are all zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use "any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."

In this review, we calculated a weighted-average dumping margins for Ercros and EHER that are zero and we did not calculate any margins which are not zero, *de minimis*, or determined entirely on the basis of facts available. Therefore, consistent with section 735(c)(5)(B) of the Act, we are applying to Industrias Quimicas Tamar, the

company not selected for individual examination in this review, a margin of zero percent.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following estimated weighted-average dumping margins for the period June 1, 202, through May 31, 2023:

Producer/exporter	Weighted-average dumping margin (percent)
Ercros S.A	0.00
Electroquímica de Hernani, S.A	0.00
Industrias Químicas Tamar S.L ..	0.00

Disclosure and Public Comment

Commerce intends to disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.⁶ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.⁷

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.⁸ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative

review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).⁹

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.¹⁰ If the weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.5 percent), then Commerce will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). If the weighted-average dumping margin is zero or *de minimis* in the final results, or if an importer-specific assessment rate is zero or *de minimis* in the final results, Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise that entered the United States during the POR that were produced by each respondent for which it did not know that its merchandise was destined to the United States, Commerce will instruct CBP to liquidate unreviewed entries at the all-others rate, if there is no rate for the intermediate company(ies) involved in the transaction.¹¹

⁶ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (APO and Service Procedures).

⁷ See 19 CFR 351.309(c)(2) and (d)(2).

⁸ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

⁹ See APO and Service Procedures.

¹⁰ See 19 CFR 351.212(b).

¹¹ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of chlorinated isos from Spain entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 24.83 percent, the all-others rate established in the investigation.¹² These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review

period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: June 27, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Companies Not Selected for Individual Examination
- V. Discussion of the Methodology
- VI. Normal Value
- VII. Currency Conversion
- VIII. Recommendation

[FR Doc. 2024–14834 Filed 7–8–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Approved International Trade Administration Business Development Mission

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing one upcoming business development mission that will be recruited, organized, and implemented by ITA. This mission is: U.S. Aerospace & Defense Trade Mission to Denmark and Sweden—October 21–24, 2024. A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: <https://www.trade.gov/trade-missions>. For each mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (<https://www.trade.gov/trade-missions-schedule>) and other internet websites, press releases to general and trade

media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Odum, Events Management Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6397 or email Jeffrey.Odum@trade.gov.

SUPPLEMENTARY INFORMATION:

The Following Conditions for Participation Will Be Used for the Mission

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation that are adequate to allow the Department of Commerce to evaluate their application. If the Department of Commerce receives an incomplete application, the Department of Commerce may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be canceled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least 51% U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each firm or service provider to be represented by the association/organization, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, are marketed under the name of a U.S. firm and have at least 51% U.S. content by value.

A trade association/organization applicant must certify and agree to the above for every company it seeks to represent on the mission. In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;

¹² See *Order*.

- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for the Mission

Targeted mission participants are U.S. firms, services providers and trade associations/organizations providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) products or services to these markets;
- The applicant's (or in the case of a trade association/organization, represented firm's or service provider's) potential for business in the markets, including likelihood of exports resulting from the mission; and
- Consistency of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission.

Balance of applicant's size and location may also be considered during the review process. Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions.

Definition of Small and Medium-Sized Enterprise

For purposes of assessing participation fees, an applicant is a small and medium-sized enterprise (SME) if it qualifies as a "small business" under the Small Business Administration's (SBA) size standards (<https://www.sba.gov/document/>

support--table-size-standards), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool (<https://www.sba.gov/size-standards>) can help you determine the qualifications that apply to your company.

Mission List: (additional information about trade missions can be found at <https://www.trade.gov/trade-missions>).

U.S. Aerospace & Defense Trade Mission to Denmark and Sweden—October 21–24, 2024

Summary

The United States Department of Commerce, International Trade Administration (ITA), is organizing a Trade Mission to Denmark and Sweden, October 21–24, 2024.

The objectives for this mission are to give U.S. companies an opportunity to provide aerospace and defense equipment, technology, and services to Denmark and Sweden, and to advance U.S. national interests. Participating U.S. firms will gain market insights, make industry contacts, solidify business strategies, and advance specific projects, with the goal of increasing U.S. exports and services in the aerospace and defense sectors.

The mission will introduce U.S. firms to aerospace and defense stakeholders in the region and assist U.S. companies in developing business in Denmark and Sweden.

The mission will include meetings with government officials and industry leaders, networking events, presentations and site visits to an Aerospace/Defense Production Facilities or an R&D Center. For companies new to the market, this will be an opportunity to make initial contacts and learn more about the large defense market in Northern Europe.

DENMARK, Copenhagen and SWEDEN, Stockholm

Aerospace and defense markets in the Nordic region are likely to grow in 2024 and beyond, creating opportunities for U.S. aerospace and defense manufacturers to increase their exports to markets in Northern Europe. The governments of Sweden and Denmark have committed to updating and improving their domestic defense capabilities. This mission supports NATO's efforts to defend Northern Europe and Ukraine coupled with the goals of the 2022 National Defense Strategy to build the strongest possible coalition to enhance our collective influence to shape the global strategic environment.

According to the Military Expenditure Database from Stockholm International

Peace Research Institute (SIPRI), for 20 years, Sweden and Denmark have spent annually the equivalent of between 1% and 2% of their GDPs on military expenditures. As a current NATO ally, Denmark has pledged to spend a minimum of 2% of its GDP on national defense but has not yet satisfied this pledge. Sweden just joined NATO in 2024, and the country's 2024 budget surpassed NATO's target of 2% of GDP on defense spending and NATO's guideline to allocate 20% of defense expenditures to equipment spending, including research and development, offering potential opportunities for U.S. defense exporters. Sweden has historically emphasized cutting edge technology and innovation and Defense Minister Pål Jonson has announced that a defense innovation strategy will be released during 2024. Sweden and Denmark membership in NATO establishes the Baltic Sea almost entirely within NATO's domain, with related requirements for air and missile defense; air and sub-sea dominance; intelligence, surveillance, and reconnaissance (including uncrewed systems) and warfighter mission training/readiness.

European NATO allies have faced greater pressure from the United States to increase defense spending since the start of Russia's war of aggression in Ukraine. The Biden Administration will use the NATO Summit in July 2024 to encourage European allies to expedite their plans to meet their defense spending pledges and bolster NATO's deterrence in Europe. These geopolitical developments could create opportunities for U.S. companies in the aerospace and defense industry to partner with Nordic allies. In some cases, Nordic countries may transfer or donate defense technology to Ukraine, creating gaps in their domestic arsenals. Swedish leaders envision Sweden as a NATO net-contributor with a strong presence in the Nordic-Baltic region and within NATO's command structure. Sweden's geostrategic importance, advanced military capabilities, strong defense industrial base, commitment to democratic values and transatlantic ties, and bolstered defense spending makes it a formidable ally. Sweden values its reputation as a peace-broker and compromise-finder.

According to U.S. aerospace and defense data on bilateral trade with the Nordic region, 2022 defense exports increased to a record \$710 million (likely due to the war in Ukraine) but decreased slightly in 2023. In the same years, the value of U.S. aerospace exports reached \$1.4 billion and \$1.9 billion, respectively. Non-defense

aerospace exports to the Nordic countries are largely comprised of civilian aircraft, engines, and parts, including turbojet/turboprop parts and gas turbine parts, presenting an opportunity for U.S. aerospace parts manufacturers and MRO suppliers to expand business in northern Europe.

In January 2024, the Government of Denmark presented a plan to spend approximately \$2.3 billion on more military equipment and personnel under its new defense legislation. The Danish Ministry of Defense will acquire short-range air defense systems for the Danish Army to increase protection against air threats (with no known U.S. bidders at this time). It also hopes to acquire long endurance uncrewed systems (drones) for surveillance and intelligence gathering, close air defense missiles for its Navy frigates, and torpedoes for Navy frigates and Air Force Sea Hawk helicopters. Denmark is also a Tier III participant in the F-35 program and will acquire 27 F-35s for its air force. In its 2021 National Defense Industrial Strategy and Action Plan, Denmark outlined its interest in integrating its defense supply chains with the U.S. companies, specifically in support of the F-35 program. Denmark has also sought to expand partnerships with U.S. prime defense contractors and grow its domestic defense industry.

In December 2023, the United States and Sweden signed a Defense Cooperation Agreement (DCA) which regulates the legal status of U.S. forces, access to deployment areas, and pre-positioning of military materiel in Sweden. While the agreement does not contain provisions for industrial cooperation, it advances efforts for the U.S. and Swedish militaries to share capabilities, develop new technology together, and achieve interoperability. As a new member of NATO, Sweden intends to spend more on defense in 2024, with a budget bill that includes investments in artillery systems, tactical

transport aircraft, naval vessels and surface combatants, electronic warfare, military fixed-wing aircraft, tactical communication systems and Blekinge-class submarines. Sweden has also stated it will contribute to the NATO Innovation Fund (NIF) and Defense Innovation Accelerator for the North Atlantic (DIANA).

Other Products and Services

The foregoing analysis of the aerospace and defense opportunities in Sweden and Denmark is not intended to be exhaustive, but illustrative of the many opportunities available to U.S. businesses. Applications from companies selling products or services within the scope of this mission, but not specifically identified, will be considered and evaluated by the U.S. Department of Commerce. Companies whose products or services do not fit the scope of the mission may contact their local U.S. Export Assistance Center (USEAC) to learn about other business development missions and services that may provide more targeted export opportunities. Companies may go to <http://trade.gov> to obtain such information.

Mission Goals

The goals of the trade mission are to create opportunities for U.S. companies to showcase their defense and aerospace equipment to Denmark and Sweden's defense, security, and law enforcement authorities, to introduce U.S. firms to aerospace and defense stakeholders in the region, to create opportunities for U.S. companies to find foreign business partners, to develop stronger industry relationships, and to advance U.S. national interests. Participants in this mission will have an opportunity to connect with senior-level Danish and Swedish officials in a setting that facilitates progress on business development projects. For companies new to the market, this will be an

opportunity to make initial contacts, learn more about aerospace and defense opportunities in northern Europe, and gain perspective from ITA on specific challenges for U.S. businesses operating in the region. By participating in an official U.S. industry delegation, rather than traveling to the region individually, U.S. industry representatives will enhance their ability to secure meetings and gain greater exposure to the region, as well as leverage the networks of industry buyers, distributors, and industry stakeholders developed by commercial specialists.

This mission will:

- Strengthen connections between U.S. companies and Danish and Swedish aerospace and defense companies, leveraging the U.S. Government and coordinating trade mission activities to maximize the potential for participating U.S. businesses to expand their business and exports to Sweden and Denmark, key NATO allies.
- Develop stronger industry relationships between U.S. and Swedish and Danish firms to strengthen the relationship between three NATO partners and enhance U.S. economic, national security, and defense goals in the region.
- Connect participants with senior-level Swedish and Danish officials in a setting that facilitates progress on business development projects. For companies new to the market, this will be an opportunity to make initial contacts and learn more about two key markets in Northern Europe.
- For the U.S. government, this is an unparalleled opportunity to strengthen our relationship with Denmark's and Sweden's Ministries of Defense to showcase the technology, know-how, and capabilities we have to offer, and demonstrate our interest in partnering with both countries to increase their national security and defense efforts.

The mission will travel to Copenhagen, Denmark and Stockholm, Sweden, with companies arriving in Copenhagen on Sunday, October 20, 2024. Companies and staff will meet informally for an optional no-host welcome dinner. In each of the two

mission stops, participants will receive a presentation display table, listen to an embassy briefing, attend networking breaks, attend two roundtables with industry officials and business contacts, present their companies capabilities during company pitch sessions and

attend an Ambassador reception. U.S. Commercial Service staff will be on-site and available to provide market information and offer logistical assistance to mission participants. Each location will offer an industry site visit as well.

PROPOSED TIMETABLE

[*Note: The final schedule and potential site visits will depend on the availability of the host government and business officials, specific goals of mission participants, and ground transportation]

Sunday October 20	• Trade Mission Participants Arrive; informal no-host dinner and excursion. • Kronberg Castle Excursion (Optional).
Monday October 21	• Company Introductions, U.S. Embassy Briefing and Q&A. • Office of Defense Cooperation, Political Section, U.S. Commercial Service, Economic Section. • Networking/Coffee. • Roundtable 1. • Lunch/Briefing. • Roundtable 2. • Networking. • Company pitches. • Ambassador reception. • Site visit.
Tuesday October 22	• Travel to Stockholm. • Optional no host diner.
Wednesday October 23	• Company Introductions, U.S. Embassy Briefing and Q&A. • Office of Defense Cooperation, Political Section, U.S. Commercial Service, Economic Section. • Networking/Coffee. • Roundtable 1. • Lunch/Briefing. • Roundtable 2. • Networking. • Company pitches. • Ambassador reception. • Site visit.
Thursday October 24	• Program concludes.
Friday, October 25	• Return to U.S.

Participation Requirements

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 7 and a maximum of 12 firms and/or trade associations will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a firm or trade association has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the U.S. Aerospace & Defense Trade Mission to Denmark and Sweden will be \$4,545.00 for small or medium-sized enterprises (SME); ¹ and \$6,410.00 for

¹ For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies under the Small Business Administration's (SBA) size standards (<https://www.sba.gov/document/support-table-size-standards>), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool (<https://www.sba.gov/size-standards/>) can help you determine the qualifications that apply to your company.

large firms or trade associations. The fee for each additional firm representative (large firm or SME/trade organization) is \$1,250.00. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

If and when an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a business development mission will be expected to pay for the cost of personal expenses,

www.sba.gov/document/support-table-size-standards), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool (<https://www.sba.gov/size-standards/>) can help you determine the qualifications that apply to your company.

including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Embassy rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Business Development Mission members participate in missions and undertake mission-related travel at their

own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at <https://travel.state.gov/content/passports/en/alertswarnings.html>. Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission economies. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public, and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees accordingly, prepare an agenda for virtual activities, and notify the previously selected applicants with the option to opt-in to the new virtual program.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (http://export.gov/trade_missions) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than July 12, 2024. The U.S. Department of Commerce will review applications and inform applicants of selection decisions on a rolling basis. Applications received after July 12, 2024, will be considered only if space and scheduling constraints permit.

Contacts

Trade Mission Lead

Diane Mooney, Director, U.S. Commercial Service—Seattle, WA, 206–553–7251, Diane.Mooney@trade.gov

U.S. Based Recruitment Lead

April Redmon, Director, U.S. Commercial Service—Virginia/DC, 703–235–0103, April.Redmon@trade.gov
 Erik Hunt, Senior International Trade Specialist, U.S. Commercial Service—Indianapolis, IN, Erik.Hunt@trade.gov
 Jason Sproule, Aerospace & Defense Global Team Leader, Commercial Service Los Angeles, 949–283–0690, Jason.Sproule@trade.gov
 Kim Wells, Aerospace Team Leader, ITA, Industry & Analysis—Washington, DC, Kim.Wells@trade.gov
 Marianne Drain, Senior Commercial Officer, U.S. Embassy Sweden, Marianne.Drain@trade.gov
 Johan Bjorkman, Commercial Specialist, U.S. Embassy Sweden, Johan.Bjorkman@trade.gov
 Tuula Ahlstrom, Commercial Specialist, U.S. Embassy Sweden, Tuula.Ahlstrom@trade.gov
 Christopher Wilken, Senior Commercial Officer, U.S. Embassy Denmark, Christopher.Wilken@trade.gov
 Aleksander Moos, Commercial Specialist, U.S. Embassy Denmark, Aleksander.Moos@trade.gov

Gemal Brangman,

Director, Global Trade Programs.

[FR Doc. 2024–14976 Filed 7–8–24; 8:45 am]

BILLING CODE 4

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–112]

Certain Collated Steel Staples From the People's Republic of China: Final Determination of No Shipments in the 2022–2023 Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Zhejiang Best Nail Industrial Co., Ltd. and its affiliated exporter Shaoxing Bohui Import & Export Co., Ltd. (Best Nail/Shaoxing Bohui) made no shipments of subject merchandise during the period of review (POR) July 1, 2022, through June 30, 2023.

DATES: Applicable July 9, 2024.

FOR FURTHER INFORMATION CONTACT:

Brian Smith, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1766.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 2024, Commerce published the *Preliminary Results* in the **Federal Register**.¹ We invited interested parties to comment on the *Preliminary Results*; however, no interested party submitted comments. Accordingly, we made no changes to the *Preliminary Results*.

Scope of the Order²

The merchandise covered by the scope of this *Order* is certain collated steel staples. Certain collated steel staples subject to this investigation are made from steel wire having a nominal diameter from 0.0355 inch to 0.0830 inch, inclusive, and have a nominal leg length from 0.25 inch to 3.0 inches, inclusive, and a nominal crown width from 0.187 inch to 1.125 inch, inclusive. Certain collated steel staples may be manufactured from any type of steel, and are included in the scope of this *Order* regardless of whether they are uncoated or coated, and regardless of the type or number of coatings, including but not limited to coatings to inhibit corrosion.

Certain collated steel staples may be collated using any material or combination of materials, including but not limited to adhesive, glue, and adhesive film or adhesive or paper tape.

Certain collated steel staples are generally made to American Society for Testing and Materials (ASTM) specification ASTM F1667–18a, but can also be made to other specifications.

Excluded from the scope of this *Order* are any carton-closing staples covered by the scope of the antidumping duty order on Carton-Closing Staples from the People's Republic of China. See *Carton-Closing Staples from the People's Republic of China*:

Antidumping Duty Order, 83 FR 20792 (May 8, 2018).

Also excluded are collated fasteners commonly referred to as “C-ring hog rings” and “D-ring hog rings” produced from stainless or carbon steel wire having a nominal diameter of 0.050 to 0.081 inches, inclusive. C-ring hog rings are fasteners whose legs are not perpendicular to the crown, but are curved inward resulting in the fastener forming the shape of the letter “C”. D-ring hog rings are fasteners whose legs

¹ See *Certain Collated Steel Staples from the People's Republic of China: Preliminary Determination of No Shipments and Partial Rescission of Administrative Review; 2022–2023 89 FR 22991* (April 3, 2024) (*Preliminary Results*).

² See *Certain Collated Steel Staples from the People's Republic of China: Antidumping Duty Order*, 85 FR 43815 (July 20, 2020) (*Order*).

are straight but not perpendicular to the crown, instead intersecting with the crown at an angle ranging from 30 degrees to 75 degrees. The hog rings subject to the exclusion are collated using glue, adhesive, or tape. The hog rings subject to this exclusion have either a 90 degree blunt point or 15–75 degree divergent point.

Certain collated steel staples subject to this *Order* are currently classifiable under subheading 8305.20.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS subheading and ASTM specification are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

Final Determination of No Shipments

In the *Preliminary Results*, Commerce determined that Best Nail/Shaoxing Bohui had no shipments of certain collated steel staples during the POR, based on Best Nail/Shaoxing Bohui's timely submitted no-shipment certification and our analysis of information from U.S. Customs and Border Protection (CBP). We received no comments with respect to our preliminary finding. Therefore, for these final results, we continue to determine that Best Nail/Shaoxing Bohui had no shipments of subject merchandise during the POR.³

Assessment Rates

Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries in accordance with section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b). As Commerce continues to find that Best Nail/Shaoxing Bohui did not have any shipments of subject merchandise during the POR, we will instruct CBP to assess any suspended entries of subject merchandise associated with Best Nail/Shaoxing Bohui at the China-wide rate (*i.e.*, 112.01 percent).

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results of review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the

time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) Best Nail/Shaoxing Bohui's cash deposit rate will continue to be its existing rate, 0.0 percent;⁴ (2) for previously investigated or reviewed Chinese and non-Chinese exporters for which a review was not requested and that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recently-completed period; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business

proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 19 CFR 351.221(b)(5).

Dated: July 1, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–14987 Filed 7–8–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819, C–489–806]

Certain Pasta From Italy and the Republic of Türkiye: Final Results of the Expedited Fifth Sunset Reviews of the Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty orders on certain pasta from Italy and the Republic of Türkiye (Türkiye) would be likely to lead to continuation or recurrence of net countervailable subsidies at the rates indicated in the “Final Results of Expedited Sunset Reviews” section of this notice.

DATES: Applicable July 9, 2024.

FOR FURTHER INFORMATION CONTACT: Blair Hood, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8329.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, Commerce published the countervailing duty orders on certain pasta from Italy and Türkiye.¹ On March 1, 2024, Commerce

³ See Best Nail/Shaoxing Bohui's Letter, “Submission of Statement of No Shipment,” dated October 11, 2023; see also Memoranda, “No Shipment Inquiry for Zhejiang Best Nail Industrial Co., Ltd. and Shaoxing Bohui Import & Export Co., Ltd. during the period 07/01/2022 through 06/30/2023,” dated November 6, 2023; and “Placing CBP Entry Documents on the Record,” dated January 19, 2024.

⁴ See *Certain Collated Steel Staples from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; and Partial Rescission; 2020–2021*, 88 FR 8800, 8801 (February 10, 2023).

¹ See *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta (“Pasta”) from Italy*, 61 FR 38544 (July 24, 1996); see also *Notice of Countervailing Duty Order: Certain Pasta (“Pasta”)*

initiated the fifth sunset reviews of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² Commerce received a timely notice of intent to participate in each of these reviews from 8th Avenue Food & Provisions, Inc., Philadelphia Macaroni Company, and Winland Foods, Inc. (collectively, the domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i).³ The domestic interested parties claimed interested party status under section 771(9)(C) of the Act.⁴

Commerce received adequate substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁵ Commerce did not receive substantive responses from any government or respondent interested party to these proceedings. On April 23, 2024, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from other interested parties.⁶ As a result, in accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited, *i.e.*, 120-day, sunset reviews of the *Orders*.

Scope of the Orders

The product covered by the *Orders* is certain pasta. For a full description of the scope of the *Orders*, see the Issues and Decision Memoranda.⁷

Analysis of the Comments Received

A complete discussion of all issues raised in these sunset reviews, including the likelihood of continuation or recurrence of subsidization in the event of revocation of the *Orders* and the net countervailable subsidy rates likely to prevail if the *Orders* were to be revoked, is provided in the Issues and Decision Memoranda. A list of topics discussed in the Issues and Decision

Memoranda is included as the appendix to this notice. The Issues and Decision Memoranda are public documents and on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of each Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Order* with respect to Italy would be likely to lead to continuation or recurrence of a countervailable subsidies at the following net countervailable subsidy rates:

Company	Subsidy rate (percent <i>ad valorem</i>)
Agritalia, S.r.l	10.45
Arrighi S.p.A. Industrie Alimentari	10.34
De Matteis Agroalimentare S.p.A	9.64
Delverde, S.r.l	13.25
F.lli DeCecco di Filippo Fara S. Martino S.p.A	9.90
Industria Alimentare Colavita, S.p.A	9.50
Isola del Grano, S.r.l	17.19
Italpasta S.p.A	17.19
Italpasta S.r.l	10.34
La Molisana Alimentari S.p.A	11.31
Labor, S.r.l	17.19
Molino e Pastificio DeCecco S.p.A. Pescara	9.90
Pastificio Guido Ferrara	8.83
Pastificio Campano, S.p.A	9.96
Pastificio Riscossa F.lli Mastromauro S.r.l	14.30
Tamma Industrie Alimentari di Capitanata	13.25
All Others	11.01

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Order* with respect to Türkiye would be likely to lead to continuation or recurrence of a countervailable subsidies at the following net countervailable subsidy rates:

Company	Subsidy rate (percent <i>ad valorem</i>)
Filiz Gıda Sanayi ve Ticaret A.S	1.73
Maktas Makarnacılık ve Ticaret A.S	13.19
Oba Makarnacılık Sanayi ve Ticaret	13.18
All Others	8.95

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218.

Dated: July 1, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memoranda

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. History of the *Order*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
 2. Net Countervailable Subsidy Rates Likely to Prevail
 3. Nature of the Subsidies
- VII. Final Results of Expedited Sunset Review
- VIII. Recommendation

[FR Doc. 2024–14986 Filed 7–8–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that chlorinated isocyanurates (chlorinated isos) from the People's Republic of China (China) were sold in the United States at less than normal value (NV) during the

¹ from Turkey, 61 FR 38546 (July 24, 1996) (collectively, *Orders*).

² See *Initiation of Five-Year (Sunset) Reviews*, 89 FR 15139 (March 1, 2024).

³ See Domestic Interested Parties' Letter, "Notice of Intent to Participate," dated March 14, 2024.

⁴ *Id.* at 3.

⁵ See Domestic Interested Parties' Letter, "Substantive Response," dated March 29, 2024.

⁶ See Commerce's Letter, "Sunset Reviews Initiated on March 1, 2024," dated April 23, 2024.

⁷ See Memoranda, "Issues and Decision Memorandum for the Final Results of the Expedited Fifth Sunset Review of the Countervailing Duty Order on Certain Pasta from Italy," dated concurrently with, and hereby adopted by, this notice; and "Issues and Decision Memorandum for the Final Results of the Expedited Fifth Sunset Review of the Countervailing Duty Order on Certain Pasta from the Republic of Türkiye," dated concurrently with, and hereby adopted by, this notice (collectively, Issues and Decision Memoranda).

period of review (POR), June 1, 2022, through May 31, 2023. Interested parties are invited to comment on these preliminary results.

DATES: Applicable July 9, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Carey, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3964.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2023, Commerce initiated this administrative review of the antidumping duty (AD) order on chlorinated isos from China covering the POR.¹ This review covers two producers/exporters: Heze Huayi Chemical Co., Ltd. (Heze Huayi); and Juancheng Kangtai Chemical Co., Ltd. (Kangtai). On February 9, 2024, Commerce extended the deadline for the preliminary results of this administrative review by 119 days, until June 28, 2024.²

For details regarding the events that occurred subsequent to the initiation of this review, *see* the Preliminary Decision Memorandum.³ A list of topics discussed in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The products covered by the order are chlorinated isos, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. Chlorinated isos are currently classifiable under subheadings

2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.5000 of the Harmonized Tariff Schedule of the United States. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.

The China-Wide Entity

Commerce’s policy regarding conditional review of the China-wide entity applies to this administrative review.⁴ Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, the entity is not under review, and the entity’s rate (*i.e.*, 285.63 percent) is not subject to change.⁵

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). Export prices have been calculated in accordance with section 772 of the Act. Because China is a non-market economy within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

Commerce preliminarily determines that Heze Huayi and Kangtai have established their eligibility for a separate rate, and that the following weighted-average dumping margins exist for the period of June 1, 2022, through May 31, 2023:

Exporter	Weighted-average dumping margin (percent)
Heze Huayi Chemical Co. Ltd	9.05
Juancheng Kangtai Chemical Co. Ltd	11.76

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice, or,

if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.⁶ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.⁷

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.⁸ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).⁹

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via Enforcement and Compliance’s Antidumping and CVD Centralized Electronic Service System (ACCESS). Requests should contain: (1) the party’s name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 51271 (August 3, 2023).

² See Memorandum, “Chlorinated Isocyanurates from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated February 9, 2024.

³ See Memorandum, “Decision Memorandum for the Preliminary Results of the 2022–2023 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People’s Republic of China,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

⁵ See *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People’s Republic of China*, 70 FR 24502, 24505 (May 10, 2005).

⁶ See 19 CFR 351.309(d).

⁷ See 19 CFR 351.309(c)(2) and (d)(2).

⁸ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

⁹ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.

Final Results of Review

Unless extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of issues raised in the case and rebuttal briefs, within 120 days of the date of publication of this notice in the **Federal Register**.¹⁰

Assessment Rates

Upon issuing the final results of this review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.¹¹ Commerce intends to issue assessment instructions to CBP no earlier than 35 days after date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

For each individually examined respondent in this review whose weighted-average dumping margin in the final results of review is not zero or *de minimis* (*i.e.*, less than 0.5 percent), Commerce intends to calculate importer-specific assessment rates for antidumping duties, in accordance with 19 CFR 351.212(b)(1).¹² Where the respondent reported reliable entered values, Commerce intends to calculate importer-specific *ad valorem* assessment rates by aggregating the amount of dumping calculated for all U.S. sales to the importer and dividing this amount by the total entered value of the merchandise sold to the importer.¹³ Where the respondent did not report entered values, Commerce will calculate importer-specific assessment rates by dividing the amount of dumping for reviewed sales to the importer by the total quantity of those sales. Commerce will calculate an estimated *ad valorem* importer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis*; however, Commerce will use

the per-unit assessment rate where entered values were not reported.¹⁴ Where an importer-specific *ad valorem* assessment rate is not zero or *de minimis*, Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or *de minimis*, or an importer-specific *ad valorem* assessment rate is zero or *de minimis*, Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.¹⁵ For entries that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.*, at the individually-examined exporter's cash deposit rate), Commerce will instruct CBP to liquidate such entries at the China-wide rate.¹⁶

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above that have a separate rate, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), then a cash deposit rate of zero will be established for that company); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that are currently eligible for a separate rate, the cash deposit rate will continue to be equal to the exporter-specific weighted-average dumping margin published for the most recently completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the cash deposit rate established for the China-wide entity (*i.e.*, 285.63 percent); and (4) for all exporters of subject merchandise that are not located in China and that are not eligible for a separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied the non-

Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 19 CFR 351.221(b)(4).

Dated: June 28, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Adjustments Under Section 777A(f) of the Act
- VI. Currency Conversion
- VII. Recommendation

[FR Doc. 2024-14833 Filed 7-8-24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Review: Panel Order To Stay Proceedings

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Panel granted a Notice of Motion to Stay Proceedings that was filed on behalf of the Government of Canada; the Governments of Ontario and Québec; Canfor Corporation, Resolute FP Canada Inc., Tolko

¹⁰ See section 751(a)(3)(A) of the Act; see also 19 CFR 351.213(h)(1).

¹¹ See 19 CFR 351.212(b)(1).

¹² See *Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification*).

¹³ See 19 CFR 351.212(b)(1).

¹⁴ *Id.*

¹⁵ See *Final Modification*, 77 FR at 8103.

¹⁶ For a full discussion of this practice, see *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

Marketing and Sales Ltd. and Tolko Industries Ltd., and West Fraser Mills Ltd. (collectively, the “Canadian Parties”) in NAFTA dispute USA–CDA–2017–1904–03. Specifically, the Panel ordered that all matters in this proceeding be stayed until the issuance of a mandate pursuant to Fed. R. App. P. 41 in a related appeal now pending before the U.S. Court of Appeals for the Federal Circuit (“CAFC”), *Stupp Corp. v. United States*, Case No. 23–1663. All other deadlines in this proceeding, including issuance of the final determination by the Panel are stayed.

FOR FURTHER INFORMATION CONTACT: Vidya Desai, United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, 202–482–5438.

SUPPLEMENTARY INFORMATION: Article 1904 of chapter 19 of NAFTA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to review the trade remedy determination being challenged and issue a binding Panel Decision. There are established NAFTA *Rules of Procedure for Article 1904 Binational Panel Reviews*, which were adopted by the three governments. For the complete *Rules*, please see https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/nafta-alena-tlcan/rules-regles-reglas/article-article-articulo_1904.aspx?lang=eng.

Dated: July 1, 2024.

Vidya Desai,

United States Secretary, NAFTA Secretariat.

[FR Doc. 2024–14789 Filed 7–8–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–903]

Raw Honey From India: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review; 2021–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on raw honey from India for the period of review (POR) November 23, 2021,

through May 31, 2023. Commerce preliminarily finds that sales of subject merchandise were made at prices below normal value (NV) during the POR. We are also preliminarily rescinding the review with respect to 14 companies that had no entries of the subject merchandise during the POR. We invite interested parties to comment on these preliminary results.

DATES: Applicable July 9, 2024.

FOR FURTHER INFORMATION CONTACT:

Brittany Bauer or Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3860 or (202) 482–2243, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2023, Commerce initiated an administrative review of the AD order on raw honey from India,¹ in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). This review covers 30 producers/exporters of subject merchandise. Commerce selected two mandatory respondents for individual examination, Allied Natural Product (Allied) and Indocan Honey Private Limited (Indocan).

On February 15, 2024, Commerce extended the deadline for these preliminary results until June 28, 2024.² For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.³

Scope of the Order

The merchandise subject to the Order is raw honey from India. For a full description of the scope, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Act. We calculated export price and constructed export price in accordance with section 772 of the Act.

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 51271 (August 3, 2023) (*Initiation Notice*); see also *Raw Honey from Argentina, Brazil, India, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 87 FR 35501 (June 10, 2022) (*Order*).

² See Memorandum, “Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated February 15, 2024.

³ See Memorandum, “Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Raw Honey from India; 2021–2023,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

We calculated NV in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, see the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Preliminary Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR subject to the AD order for which liquidation is suspended, Commerce may rescind an administrative review, in whole or only with respect to a particular exporter or producer.⁴ At the end of the administrative review, any suspended entries are liquidated at the assessment rate computed for the review period.⁵ Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry to be liquidated at the newly calculated assessment rate.

On August 9, 2023, we released U.S. import data from U.S. Customs and Border Protection (CBP) for the purpose of respondent selection.⁶ These data showed that 14 companies for which Commerce initiated an administrative review had no reviewable, suspended entries of subject merchandise.⁷ Accordingly, pursuant to 19 CFR 351.213(d)(3) and (d)(4), we are preliminarily rescinding this administrative review with respect to the 14 companies listed in Appendix II to this notice that had no reviewable, suspended entries of subject merchandise during the POR. Absent evidence of a shipment on the record from the 14 companies listed in

⁴ See, e.g., *Forged Steel Fittings from Taiwan: Rescission of Antidumping Duty Administrative Review; 2018–2019*, 85 FR 71317, 71318 (November 9, 2020); see also *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Rescission of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 54084 (October 26, 2018).

⁵ See 19 CFR 351.212(b)(1).

⁶ See Memorandum, “Placing U.S. Customs and Border Protection Data on the Record,” dated August 9, 2023.

⁷ *Id.*

Appendix II during the POR, Commerce intends to rescind its review of these companies, pursuant to 19 CFR 351.213(d)(3).

Rate for Companies Not Individually Examined

The Act and Commerce's regulations do not address the establishment of a weighted-average dumping margin to be assigned to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when determining the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}."

We preliminarily calculated a *de minimis* dumping margin for Allied and an above *de minimis* margin for Indocan. Accordingly, we have preliminarily assigned to the non-selected companies a rate of 0.59 percent, *i.e.*, the rate for Indocan, because that is the only rate that is not zero, *de minimis*, or based entirely on facts available.

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margins exist for the period November 23, 2021, through May 31, 2023:

Exporter/producer	Weighted-average dumping margin (percent)
Allied Natural Product	0.00
Indocan Honey Private Limited ..	0.59
Companies Not Selected for Individual Review ⁸	0.59

Disclosure and Public Comment

We intend to disclose the calculations performed to parties within five days after public announcement of the preliminary results or, if there is no public announcement, within five days

⁸ The exporters or producers not selected for individual examination are listed in Appendix III.

of the date of publication of this notice.⁹ Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.¹⁰ Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹¹ Interested parties who submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹²

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹³ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁴

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS.¹⁵ Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in case and rebuttal briefs.¹⁶ If a request for a hearing is made, Commerce intends to hold the

⁹ See 19 CFR 351.224(b).

¹⁰ See 19 CFR 351.309(c)(1)(ii); see also 19 CFR 351.303 (for general filing requirements).

¹¹ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023).

¹² See 19 CFR 351.309(c)(2) and (d)(2).

¹³ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁴ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

¹⁵ See 19 CFR 351.310(c).

¹⁶ See 19 CFR 351.310.

hearing at a time and date to be determined. A hearing request must be filed electronically using ACCESS and received in its entirety by 5:00 p.m. Eastern Time within 30 days after the publication of this notice.

Assessment Rates

Upon completion of the final results of this administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.¹⁷ Pursuant to 19 CFR 351.212(b)(1), if the weighted-average dumping margin for Allied or Indocan is not zero or *de minimis* (*i.e.*, less than 0.50 percent) in the final results of this review, we will calculate importer-specific assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales. If either respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific assessment rate is zero or *de minimis*, Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review, and for future deposits of estimated duties, where applicable.¹⁸

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by Allied or Indocan for which the company did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate established in the original less-than-fair-value (LTFV) investigation (*i.e.*, 5.87 percent)¹⁹ if there is no rate for the intermediate company(ies) involved in the transaction.²⁰

For the companies listed in Appendix III which were not selected for individual examination, we will assign an assessment rate based on the review-specific rate, calculated as noted in the "Rate for Companies Not Individually Examined" section, above. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this

¹⁷ See 19 CFR 351.212(b).

¹⁸ See section 751(a)(2)(C) of the Act.

¹⁹ See *Order*, 87 FR at 35503.

²⁰ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

review and for future deposits of estimated duties, where applicable.²¹

If, in the final results, we continue to find that the administrative review for the companies listed in Appendix II should be rescinded, we will instruct CBP to assess antidumping duties on any suspended entries that entered under the CBP case numbers of those companies (*i.e.*, at those exporters' rates) at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the POR.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margins established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by a company not covered in this review, but covered in a prior segment of the proceeding, the cash deposit rate will be the company-specific rate published for the most recently-completed segment in which it was reviewed; (3) if the exporter is not a firm covered in this review or in the original LTFV investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 5.87 percent, the all-others rate established in the LTFV investigation.²² These cash deposit

requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213 and 19 CFR 351.221(b)(4).

Dated: June 28, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Preliminary Partial Rescission of Administrative Review
- V. Discussion of the Methodology
- VI. Currency Conversion
- VII. Recommendation

Appendix II—Companies for Which We Are Preliminarily Rescinding the Administrative Review

1. AA Food Factory
2. Alpro
3. Aone Enterprises
4. Apl Logistics
5. Bee Hive Farms
6. Dabur India Limited
7. Ess Pee Quality Products
8. Infinator Pvt., Ltd.
9. Natural Agro Foods
10. NYSA Agro Foods
11. Shan Organics
12. Sunlite Organic
13. UTMT
14. Vedic Systems

Appendix III—Companies Not Selected for Individual Examination

1. Ambrosia Natural Products (India) Private Limited/Ambrosia Enterprise/Sunlite India Agro Producer Co., Ltd.
2. Apis India Limited
3. Brij Honey Pvt., Ltd.
4. Ganpati Natural Products
5. GMC Natural Product
6. Hi Tech Natural Products India Ltd.
7. Kejriwal Bee Care India Private Limited
8. KK Natural Food Industries LLP
9. Pearlcot Enterprises
10. Queenbee Foods Pvt. Ltd.
11. Salt Range Foods Pvt. Ltd.
12. Shakti Api Foods Private Limited²³
13. Shiv Apiaries
14. Yieppie Internationals

[FR Doc. 2024–14988 Filed 7–8–24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

CHIPS National Advanced Packaging Manufacturing Program (NAPMP) Advanced Packaging Research and Development

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of intent (NOI).

SUMMARY: The CHIPS Research and Development Office (CHIPS R&D) intends to announce, via a Notice of Funding Opportunity (NOFO), an open competition for new research and development (R&D) activities to establish and accelerate domestic capacity for semiconductor advanced packaging. The purpose of this NOI is to offer preliminary information to potential applicants, facilitating the development of meaningful partnerships and strong, responsive proposals relevant to one or more of five R&D areas: Equipment, Tools, Processes, and Process Integration; Power Delivery and Thermal Management; Connector Technology, Including Photonics and Radio Frequency (RF); Chiplets Ecosystem; and Co-design/Electronic Design Automation (EDA). In addition to the R&D areas, the NOFO is expected to include a specific opportunity for prototype development in exemplar application areas such as high-performance computing and low-power systems needed for AI.

FOR FURTHER INFORMATION CONTACT: Questions may be directed via email to

²³ We also initiated this review on “Shakti Apifoods Pvt Ltd,” which we are preliminarily considering to be the same company. *See Initiation Notice.*

²¹ See section 751(a)(2)(C) of the Act.

²² See *Order*, 81 FR at 11176.

askchips@chips.gov with “2024–NIST–CHIPS–NAPMP–Advanced Packaging” in the subject line, or via phone to Bill Burwell at 240–224–4335. All answers to questions, provided at the sole discretion of CHIPS R&D, will be posted on the CHIPS R&D website at <https://www.nist.gov/chips/chips-RD-funding-opportunities>, with further information provided on this site once the open competition has been announced.

SUPPLEMENTARY INFORMATION:

Purpose. The CHIPS Research and Development Office (CHIPS R&D) intends to announce, via a Notice of Funding Opportunity (NOFO), an open competition for new research and development (R&D) activities to establish and accelerate domestic capacity for semiconductor advanced packaging. The technical focus and R&D goals of the NOFO are expected to be informed by recent industry roadmaps, which share the common theme that emerging applications like high performance computing and low power electronics, both needed for artificial intelligence (AI), require leap-ahead advances in microelectronics capabilities, including advanced packaging. Advanced packaging allows manufacturers to make improvements in performance and function and to shorten time to market. Additional benefits include a reduced physical footprint, lower power, increased chiplet reuse, and potentially decreased costs. Achieving these goals requires coordinated investments to support integrated R&D activities to establish leading-edge domestic capacity for semiconductor advanced packaging.

In addition to the R&D areas, the NOFO is expected to include a specific opportunity for prototype development in exemplar application areas. These exemplar applications are likely to focus on areas such as high-performance computing and low-power systems needed for AI. Prototypes should be designed to demonstrate and validate research advances and new packaging flows resulting from projects supported through this NOFO.

More information about the expected CHIPS R&D NAPMP Advanced Packaging Research and Development NOFO will be available on the CHIPS for America website at <https://www.nist.gov/chips/chips-rd-funding-opportunities>.

CHIPS R&D anticipates awarding a total of up to approximately \$1,600,000,000 in cooperative agreements and other transaction agreements in amounts up to approximately \$150,000,000 in federal funds per award. Multiple awards for

projects varying in scope and funding amount are expected within this NOFO, with a period of performance of up to 5 years per award. While co-investment will not be required, CHIPS R&D will give preference to applications that demonstrate credible co-investment commitments. The purpose of this NOI is to offer preliminary information to potential applicants, facilitating the development of meaningful partnerships and strong, responsive proposals relevant to one or more of the R&D research and prototype¹ development areas described below.

CHIPS R&D Mission. The CHIPS and Science Act appropriated approximately \$50 billion to the Department of Commerce—\$39 billion in incentives to onshore semiconductor manufacturing and \$11 billion to advance U.S. leadership in semiconductor R&D. Within CHIPS for America, the mission of CHIPS R&D is to accelerate the development and commercial deployment of foundational semiconductor technologies by establishing, connecting, and providing access to domestic research efforts, tools, resources, workers, and facilities.

NAPMP Objectives. NAPMP, one of multiple CHIPS R&D initiatives, seeks to drive U.S. leadership in advanced packaging and provide the technology and skilled workforce needed for packaging manufacturing in the United States. Within a decade, NAPMP-funded activities, coupled with CHIPS manufacturing incentives, will establish a vibrant, self-sustaining, profitable, domestic packaging industry where advanced node chips manufactured in the United States and abroad can be packaged in appropriate volumes within the United States and innovative designs and architectures are enabled through leading-edge packaging capabilities. In combination with other CHIPS for America education and workforce efforts, NAPMP-funded activities will also produce the diverse and capable workforce needed for the success of the domestic packaging sector.

Advanced Packaging Research and Development NOFO Objective. The intended objective of the NOFO will be to enable, through R&D, innovative new advanced packaging flows suitable for adoption by U.S. industry. To pursue

¹ The term “prototype” is used throughout to refer to a functional system produced through an end-to-end advanced packaging process flow for the purpose of demonstrating the characteristics of that flow and the prototype design, including packaging process characteristics such as process stability, yield, reliability, and defectivity; and prototype characteristics such as functionality, performance, power/energy consumption, and thermal dissipation.

this objective, CHIPS R&D expects to design the NOFO with the following elements. First, the NOFO is expected to set out R&D areas to be supported in addressing key challenges and technology gaps in advanced packaging. Second, it is expected to provide for coordinated R&D efforts aligned through common technical targets so that results collectively contribute to composable and implementable advanced packaging flows. Finally, it is expected to provide for demonstrating the benefits of R&D results through a combination of prototypes and baseline packaging flows.

Background. The technical focus and R&D goals of this NOFO are expected to be informed by a series of industry roadmaps, including the 2024 IEEE Heterogeneous Integration Roadmap (<https://eps.ieee.org/technology/heterogeneous-integration-roadmap/2024-edition.html>) and International Roadmap for Devices and Systems (<https://irds.ieee.org/editions/>), the Semiconductor Research Corporation (SRC) Microelectronics Advanced Packaging Technologies Roadmap (<https://srcmapt.org/>); the UCLA and SEMI Manufacturing Roadmap for Heterogeneous Integration and Electronics Packaging ([https://chips.ucla.edu/page/MRHIEPProject/MRHIEP Final Report](https://chips.ucla.edu/page/MRHIEPProject/MRHIEP%20Final%20Report)); and the iNEMI 5G/6G mmWave Materials and Electrical Test Technology Roadmap (<https://www.inemi.org/article/content.asp?adminkey=cc22bf8eb1bfb8248c594509fe54dd9b&article=275>). Collectively, these roadmaps emphasize that emerging technologies like high performance computing and artificial intelligence, advanced telecommunications, biomedical devices, and autonomous vehicles require leap-ahead advances in microelectronics capabilities.

In the past, the semiconductor industry has largely addressed performance needs by increasing the number and density of transistors on a chip, a process known as miniaturization. However, the previous pace of miniaturization, as expressed by Moore’s Law, is slowing and cannot alone provide the performance improvements needed for emerging microelectronics technologies. Improving all aspects of system performance to support the breadth of new semiconductor applications will require innovations in advanced packaging.

Semiconductor packaging serves two general purposes. One is to protect the chip mechanically, thermally, and environmentally. The other is to enable reliable inter-chip communication and

data processing, power delivery, and a stable test and system integration platform. Advanced packaging and related capabilities, such as heterogeneous integration, are designed to increase all aspects of system performance by linking multi-component-assemblies with large numbers of interconnects to achieve a degree of integration that blurs the line between chip and package.

Program Drivers: In designing proposals, applicants should consider in their planning activities the below five program drivers guiding the design of this NOFO.

1. Scale-down and Scale-out
2. Heterogeneous Integration, including Chiplets
3. End-to-End Advanced Packaging Flows
4. Prototypes for Demonstrating Functionality
5. Aligned R&D efforts for Implementable Advanced Packaging Flows

These program drivers are aligned with the industry roadmaps referenced above and the objectives outlined in the Vision for the National Advanced Packaging Manufacturing Program (<https://www.nist.gov/system/files/documents/2023/11/19/NAPMP-Vision-Paper-20231120.pdf>). The drivers are outlined below and are expected to be relevant to all R&D areas under this NOFO. Review, evaluation, and selection criteria for the NOFO are expected to include consideration of these drivers.

The first program driver is the ability in advanced packaging to “scale-down and scale-out.” Scaling-down refers to shrinking the size of the features on the package and increasing interconnect densities. Scaling out refers to increasing the number of chips assembled on the substrate and overall functional density in both 2-dimensional (2D) and 3-dimensional (3D) architectures. Examples of scaling down goals and targets can be found in the MRHIEP roadmap (<https://chips.ucla.edu/page/MRHIEP%20Project/MRHIEP%20Final%20Report>). Applicants should consider in their planning activities interdisciplinary approaches that contribute to scaling-down and scaling-out in advanced packaging.

The primary driver for advanced 2D and 3D packaging technologies is the need for increased interconnect densities to support [heterogeneous integration] and deliver increasing bandwidth in a power efficient manner while enabling efficient power delivery. NIEEE Heterogeneous Integration

Roadmap 2024 (<https://chips.ucla.edu/page/MRHIEP%20Project/MRHIEP%20Final%20Report>).

The second driver is advancing capabilities for heterogeneous integration (HI), including chiplets.² This driver focuses on the NAPMP objective for “creating an advanced packaging ecosystem based on heterogeneous chiplet technology to promote widespread and easy use of the technologies developed.”³ Applicants should incorporate considerations for heterogeneous integration and chiplets-based architectures in their research planning.

Heterogeneous Integration is essential to maintain the pace of progress with higher performance, lower latency, smaller size, lighter weight, lower power requirement per function, and lower cost. IEEE Heterogeneous Integration Roadmap 2021 (https://eps.ieee.org/images/files/HIR_2021/ch01_overview.pdf).

[T]he exponential growth in package pin counts and I/O power consumption, domain-specific architectures, technical and business models of [intellectual property] reuse, and mixed technology node chiplets will drive advances in HI and advanced packaging. SRC MAPT Roadmap (<https://srcmapt.org/wp-content/uploads/2024/03/SRC-MAPT-Roadmap-2023-v4.pdf>).

The third program driver is enabling end-to-end advanced packaging flows suitable for adoption by industry. This driver addresses the NAPMP objective to “develop packaging platforms capable of both high-volume and customized manufacturing.”³ To address this driver, applicants should plan for implementing their research outputs in a full packaging flow.

The CHIPS Research and Development Office has designed the NAPMP to include an Advanced Packaging Piloting Facility ([N]APPF) where successful development efforts will be transitioned and validated for scaled transition to U.S. manufacturing. NAPMP Vision Paper (<https://www.nist.gov/document/vision-national-advanced-packaging-manufacturing-program>).

² The term “chiplets” refers throughout to the design of small, functionally targeted semiconductor chips that, when assembled at tight pitch and placement, result in a highly functional subsystem. Examples of chiplets in an ecosystem include common functions such as CPU, input/output devices, memory, domain-specific accelerators, etc.

³ The Vision for the National Advanced Packaging Manufacturing Program (NAPMP Vision Paper, <https://www.nist.gov/document/vision-national-advanced-packaging-manufacturing-program>), Nov. 2023.

The fourth driver is *demonstrating functionality in prototypes* to provide evidence for new capabilities, increased efficiencies, lowered production costs, reduced environmental impact, or other benefits resulting from research advances. This driver addresses the NAPMP objective to “enable successful advanced packaging development efforts to be validated and transitioned at scale to U.S. manufacturing.”³ NAPMP expects to support projects to design prototypes in application areas such as high-performance computing and artificial intelligence and low-power systems under the NOFO.

The final driver is *aligning R&D* efforts so that R&D results are not isolated or incompatible, but instead collectively contribute to implementable advanced packaging flows. Successful applicants should expect to participate in coordination and information-sharing across projects in all R&D areas. The NOFO is expected to include provisions for coordination and cooperation activities connecting all of the R&D projects.

Advanced Packaging Research and Development NOFO Objectives: Consistent with the research incentives areas identified in the NAPMP Vision Paper (<https://www.nist.gov/document/vision-national-advanced-packaging-manufacturing-program>), the NOFO is expected to focus on proposals in one or more of five R&D areas with the potential to strategically enhance domestic advanced packaging capabilities through innovation in:

1. Equipment, Tools, Processes, and Process Integration;
2. Power Delivery and Thermal Management;
3. Connector Technology, Including Photonics and Radio Frequency (RF);
4. Chiplets Ecosystem; and/or
5. Co-design/Electronic Design Automation (EDA).

Within these areas, CHIPS R&D intends to fund R&D activities that establish and promote relevant domestic capability and capacity, with the following objectives:

1. Accelerate domestic R&D and innovation in advanced packaging;
2. Transition advanced packaging innovation into U.S. manufacturing, such that these technologies are available to U.S. manufacturers and customers, including to significantly benefit U.S. economic and national security;
3. Support the establishment of a robust, sustainable, domestic capacity for advanced packaging R&D, prototyping, commercialization, and manufacturing; and

4. Promote a pipeline of skilled and diverse workers for a sustainable domestic advanced packaging industry.

To ensure that funded R&D meets the above objectives, CHIPS R&D expects to specify technical targets for applicants to achieve within each of the five R&D areas described below. Individual proposals may address one or more of the R&D areas. Note that these R&D areas are aligned with the relevant research investment areas set out in the NAPMP Vision Paper (<https://www.nist.gov/document/vision-national-advanced-packaging-manufacturing-program>).

R&D Area 1: Equipment, tools, processes, and process integration: This R&D area is expected to include developing: (1) end-to-end packaging flows that enable a chiplet-based advanced packaging architecture suitable for commercial adoption; (2) advanced, flexible, extensible process technologies required to produce a packaged subassembly; and (3) new packaging equipment needed to run the packaging processes and to handle the required substrates, wafers and dies, all at the scaled down dimensions set out in the previous NAPMP Materials and Substrates NOFO, located at <https://www.nist.gov/document/nofo-national-advanced-packaging-manufacturing-program-napmp-materials-substrates> (see Table 2, page 14) and designed for use at commercial scale.

R&D in this area is expected to focus on five packaging process clusters, with a cluster defined as a sequence of steps that enable a key part of the packaging flow. The five process clusters expected to be relevant to this NOFO are:

1. **Chiplet Singulation:** Producing singulated chiplets from incoming wafers that are fully patterned with dies, for subsequent assembly.

2. **Chiplet to Substrate Bonding:** Positioning and attaching chiplets with ultra-fine-pitch bonding pads to substrates, in dense arrays with close chiplet-to-chiplet spacing. This includes bonding techniques designed to improve bond quality, positioning precision, process flexibility, process efficiency, and overall cluster efficiency. Examples include thermal compression bonding, fusion bonding, hybrid bonding, multi-step sequences, and other methods.

3. **Chiplet Reconstitution:** Placing and attaching singulated chiplets on a carrier. Reconstitution should be compatible with the scaled down dimensions set out in the previous NAPMP Materials and Substrates NOFO, located at <https://www.nist.gov/document/nofo-national-advanced-packaging-manufacturing-program>

napmp-materials-substrates (see table 2, page 14).

4. **3-Dimensional Integration (3DI):** Forming heterogeneous chiplet stacks with ultra-fine bonding pad pitches.

5. **Finishing:** Incorporating advanced power delivery, passivation, thermal management, and connectors, including photonics, into the packaged device.

NAPMP expects that proposals within this R&D area may address one or more of these clusters, including the relevant equipment, tools, and processes. The NOFO is expected to call for comprehensive R&D approaches that encompass interactions between steps and step sequencing within each cluster. The NOFO is also expected to include proposals addressing cluster assembly, *i.e.*, sequencing of multiple clusters for end-to-end packaging process flows suitable for use in advanced packaging of prototypes. Note that the specific processes and sequence of steps within each cluster are expected to be driven by the requirements of the prototype to be packaged.

R&D Area 2: Power delivery and thermal management: The expected focus of this R&D area is to address the challenges introduced by advanced packaging in terms of power delivery, power efficiency, and thermal management.

Examples of the associated research challenges expected to be considered in this R&D area include the following.

1. New thermal solutions—for implementation with advanced substrates, 3D heterogeneous integration (3DHI), and other design aspects—to reduce hotspots, maintain thermal targets, and enable reliability in multilayer stacks without constraining connectivity.

2. Innovative approaches for delivering power at high density with efficient voltage regulators and dynamic power management schemes for 3DHI devices, including modular designs and devices for use with a variety of chiplets.

3. Validated, higher fidelity models and accelerated learning using artificial intelligence and machine learning (AI/ML) to accurately predict power and thermal distribution across chiplet stacks and enable advanced system design and evaluation.

4. Integrated power and thermal management to reach efficiency and power density goals with modular designs for use with fine-pitch, bonded stacks of chiplets.

It is expected that proposals within this area may consider related research challenges within other R&D areas, such as Co-design/Electronic Design Automation and Chiplets Ecosystem.

Expected to be in scope are vertical heat extraction, local heat spreading, advanced methods for active and passive cooling of 3DHI devices to reliably operate at higher power density, wide bandgap chiplets for 3DHI, and advanced materials and architectures to achieve specific thermal and power goals such as low-resistance thermal interfaces. Expected to be out of scope are discrete packaged wide bandgap devices and conventional cooling approaches.

R&D Area 3: Connector Technology, Including Photonics and RF: The expected goal for this R&D area is innovation for high data-rate, low latency, small footprint, error-free, and energy-efficient connections between packaged sub-assemblies. It is expected that the intended sub-assemblies will be chiplet populated substrates where the substrates have the characteristics set out in Section 1.5 of the NAPMP Materials and Substrates NOFO, located at <https://www.nist.gov/document/nofo-national-advanced-packaging-manufacturing-program-napmp-materials-substrates>.

NAPMP expects that, depending on the distance between the packaged assemblies, the mode of data transfer may be via flexible wire, such as serializer/deserializer (SerDes) with or without repeaters; wireless, including RF; or low-loss photonics via optical fiber arrays. It is also expected that projects may address one or more of these modes of data transfer. RF transceivers and optical engines are expected to be provided using chiplet-based technology or embedded directly into the advanced substrates. Potential applicants are encouraged to focus on new scale-down and scale-out technologies for connections that enable secure communications and provide for mechanical, electrical, and thermal reliability.

It is expected that chiplet sub-assemblies to substrate connectors will be in scope for this R&D area. Expected to be out of scope are traditional ball grid array (BGA) or land grid array (LGA) connectors and conventional wire bonding.

R&D Area 4: Chiplets Ecosystem: This R&D area is expected to focus on developing a comprehensive set of novel technologies for chiplet ecosystems that leverage advanced packaging to enable application-specific integrated packages that go beyond the capabilities of conventional monolithic ASICs (application-specific integrated circuits). It is expected that chiplets in an application-specific integrated package will need to communicate and operate together. For this NOI, the term

“chiplet ecosystem” is used to refer to: (1) a set of chiplets that can be used to form application-specific integrated packages and (2) the set of requirements new chiplets have to follow to be added to the ecosystem. Consistent with this definition, chiplets in an ecosystem can be combined in multiple ways to form diverse products.

It is expected that successful proposals should develop a chiplet ecosystem that meets as many of the following goals as is possible.

- The ecosystem provides for increasing performance over time by continually leveraging the tighter bond pitch and more intimate interaction that will be made possible by fine-pitch packaging, starting at a bond pitch of ~10 microns.

- The ecosystem enables designs that consist of a discrete number of chiplets, include support for 3D stacks, and are based on a chiplet integration layer specification that is not adequately addressed in current open systems and reduces the cost of adding new chiplets.

- System performance in the ecosystem can be increased by increasing the number of chiplets. For example, a high-performance chiplet ecosystem can be scaled up by increasing the number of chiplets rather than by developing new larger chiplets. This scaling up strategy enables going from a multi-chiplet device design comparable to a monolithic ASIC to a “rack ‘n’ pack” device (*i.e.*, an application-specific integrated package comparable to a wafer-scale processor).

- The ecosystem enables designers to address all supported design requirements with provisions to accommodate yield loss in packaging assembly and optimize power and energy to meet performance requirements with the available system resources.

It is expected that proposals should be centered around exemplar applications in the areas of high-performance computing/AI, and low-power applications. It is expected that the NOFO will require applicants to plan for making chiplets resulting from funded project research available for purchase at cost in prototype quantities and in wafer form for research use at the National Advanced Packaging Piloting Facility (NAPPF).

It is expected that, in addition to ecosystem development, chiplets for packaging process development that support any of the other five R&D areas will be in scope. Memory is also expected to be in scope but must be at fine bond pitch consistent with NAPMP scale-down goals (see Section 1.5 of the NAPMP Materials and Substrates

NOFO, located at <https://www.nist.gov/document/nofo-national-advanced-packaging-manufacturing-program-napmp-materials-substrates>).

Expected to be out of scope for this R&D area are: designs that are extensions of conventional approaches based on commodity packaging and that do not directly leverage advanced packaging in their architecture; designs tightly coupled to the choice of an SoC-bus (system-on-chip bus) or other high-level protocols; or standalone chiplet designs for any function not coupled to a chiplet ecosystem. Also expected to be out of scope are ecosystem design proposals that: focus on unmodified reuse of existing chiplets; target the development of new chiplets to integrate existing chiplets into new architectures; do not leverage advanced packaging; or do not provide for the delivery of chiplets and application-specific integrated packages.

R&D Area 5: Co-design/Electronic Design Automation: The expected focus of this R&D area is co-design with automated tools of multi-chiplet subsystems for advanced packaging in scaled-down and scaled-out designs (see NAPMP Materials and Substrates NOFO Table 2, page 14 for insights into relevant dimensions and capabilities, located at <https://www.nist.gov/document/nofo-national-advanced-packaging-manufacturing-program-napmp-materials-substrates>). This includes innovations in EDA interoperability; EDA-enabled incorporation and co-optimization of chiplets of different sizes in a large platform design including logical electrical, photonic, thermal, and mechanical models; and advances in seamless integration of the chip to package. Additional areas could include the use of artificial intelligence/machine learning (AI/ML) in package design and design approaches for test, repair, security, and reliability including graceful failure through designs that enable continued operation at a reduced performance level after failure of one or more components. Applicants should address comprehensive co-design capabilities that include a detailed understanding of the substrate and processes used for assembly, including power and thermal management, and connector solutions. It is expected that EDA that addresses purely monolithic applications without consideration of chiplets, heterogeneity and the multi-scale, multi-physics packaging environment will be out of scope for this R&D area.

Prototype Development: In addition to the five R&D areas listed above, the NOFO is expected to include

opportunities for prototype development in exemplar application areas such as high-performance computing and artificial intelligence, and low-power systems applications. The goal in prototype development is to establish new advanced packaging flows that leverage the technologies being developed across the five R&D areas. Functionality will be a requirement, and prototypes should be designed to provide a means for assessing relevant packaging characteristics such as yield and preliminary reliability.

Commercial Viability and Domestic Production: In accordance with 15 U.S.C. 4656(g), the NOFO will include requirements for a commercial viability and domestic production plan (<https://www.nist.gov/system/files/documents/2024/03/12/CHIPS%20R%26D%20Commercial%20Viability%20and%20Domestic%20Production%20CVD%20Plan%20Guidebook.pdf>), describing activities to be funded as part of the proposed project and, potentially, additional commercialization activities beyond the period of performance. The CVD plan must include a realistic business model for the funded innovations, include a technology transition plan, and describe pathways to benefitting national and economic security, such as through the domestic availability of the technology and successful adoption by commercial or defense partners.

Education and Workforce Development: The NOFO is expected to include requirements for an education and workforce development plan, (<https://www.nist.gov/system/files/documents/2024/06/17/CHIPS%20RD%20Education%20and%20Workforce%20Development%20Plan%20Guidebook-508C.pdf>), that leverages capabilities supported through the proposed project to address domestic advanced packaging workforce needs, including educational opportunities arising from engaging students in research. NAPMP encourages applicants to, in providing an Education and Workforce Development (EWD) plan, describe any efforts to attract and retain a diverse student and trainee population and to demonstrate that the EWD efforts are worker centered, industry-aligned, and promote good jobs with working conditions consistent with the Good Jobs Principles (<https://www.dol.gov/general/good-jobs/principles>), published by the Department and the U.S. Department of Labor.

National Advanced Packaging Piloting Facility: The CHIPS Research and Development Office has designed the NAPMP to include a NAPPF, where

successful research and development efforts will be implemented and validated for suitability for volume-scaled manufacturing. The specific tools and capabilities of the NAPPF will be aligned with the “scale down and scale out” strategy described in the NAPMP Vision Paper (<https://www.nist.gov/document/vision-national-advanced-packaging-manufacturing-program>). Additional details regarding the NAPPF will be posted to the CHIPS for America website (<https://www.nist.gov/chips/chips-RD-funding-opportunities>) as they are announced.

Where applicable, proposers responding to the NOFO are expected to be asked to implement their research outputs in the NAPPF once established. NAPMP program managers will work with applicants in the post-award phase to facilitate work with the NAPPF.

Technical Targets: Each R&D area is expected to include technical targets selected by CHIPS R&D for their potential to guide innovation toward the scale-down and scale-out goals of the program. Applicants should review the previous NAPMP Materials and Substrates NOFO, located at <https://www.nist.gov/document/nofo-national-advanced-packaging-manufacturing-program-napmp-materials-substrates>, which provides detailed insights into the NAPMP “scale down and scale out” targets. Sections 1.4.3, Technical Areas, and 1.5, Project-level Technical Targets, provide detailed information about substrate materials and technical targets.

Eligible Use of Funds. Funded activities are expected to include, but not necessarily be limited to, basic and applied research, development of relevant advanced packaging manufacturing-scale equipment and processes, the design and demonstration of prototypes, commercial viability and domestic manufacturing preparation, workforce education and training, and pilot-level fabrication.

Eligibility. CHIPS R&D expects eligible lead applicants and subrecipients will include for-profit organizations; non-profit organizations; accredited institutions of higher education, including community and technical colleges and minority serving institutions; and state, local, territorial, and Tribal governments. Entities that operate Federally Funded Research and Development Centers (FFRDCs) may be eligible to receive this funding as subrecipients to an eligible applicant to the extent allowed by law, based on the unique and specific needs of the project. It is expected that the NOFO will require that applicants must be domestic entities, meaning entities incorporated in the United States

(including U.S. territories) with their principal place of business in the United States, including U.S. territories, and will potentially be subject to other eligibility requirements.

Subrecipients are those who are designated by the lead applicant as subrecipients, included in the proposed budget, and whose activities are a continuing part of ongoing project activities with their work tailored to specific project goals, such as research and development activities, education and workforce activities, and other integral project efforts. Vendors selling goods and services to award recipients in the ordinary course of business are not considered subrecipients.

It is expected that foreign organizations may be permitted to participate as members of a project team, as sub-subrecipients or contractors, subject to CHIPS R&D approval based on a written justification that the foreign partner’s involvement is essential to advancing program objectives, among other considerations.

R&D Collaboration: CHIPS R&D expects that applicants assembling teams (*i.e.*, with a lead applicant from industry or academia and one or more subrecipients) may be best suited to collectively provide the full range of expertise and capabilities needed to achieve the program objectives and to successfully strengthen U.S. advanced packaging innovation. Equally important, effective partnerships can promote inventiveness, clarify future demand, improve transparency and security, solidify business and domestic manufacturing plans (including plans for technology adoption by defense and commercial partners), help educate the future workforce, mitigate the risk of future chip shortages or oversupply, and support a more productive, efficient, and self-sustaining semiconductor ecosystem.

CHIPS R&D therefore strongly encourages applications from teams that demonstrate collaboration across the innovation, manufacturing, supply chain, and customer landscape, as well as across the industry, non-profit, and academic sectors. Applications that do not include teams may be required to include a justification for the proposed single-entity approach.

Application Process and Award Information. The envisioned application process consists of a mandatory concept paper and a required full application. CHIPS R&D anticipates a due date for concept papers of approximately 60 days after the date of NOFO publication. Full applications would only be accepted from applicants invited to apply after the concept paper stage.

Submissions from entities other than those specifically invited to submit a full application would not be reviewed or considered in any way.

CHIPS R&D expects to host a webinar series after this NOI is released to provide additional opportunities to learn about the Notice of Intent. Details regarding the time and date of webinar events will be posted on the CHIPS R&D website at <https://www.nist.gov/chips/chips-RD-funding-opportunities>. Participation in webinars is not a prerequisite for submitting a concept paper or application.

Additionally, to provide the public with an opportunity to learn more about the NOFO, CHIPS R&D expects to host a Proposers Day after the NOFO is released to familiarize potential applicants with the NOFO objectives and program structure. CHIPS R&D will announce details regarding the date and location of Proposers Day via the CHIPS R&D website at <https://www.nist.gov/chips/chips-RD-funding-opportunities>. Attendance is not a prerequisite for submitting a concept paper or application.

Competition Information. Once the open competition has been announced, further information may be found at <https://www.nist.gov/chips/chips-RD-funding-opportunities>.

System for Award Management. In anticipation of the NOFO, CHIPS R&D encourages potential applicants to complete the following steps, which are required to submit concept papers and full applications for Federal assistance:

- Register with the System for Award Management (SAM) at <https://www.sam.gov>. CHIPS R&D strongly encourages applicants to register for SAM.gov as early as possible. While this process ordinarily takes between three days and two weeks, in some circumstances it can take six or more weeks to complete due to information verification requirements. Recipients will be required to maintain an active registration in SAM and re-validate registration annually.
- Register for a *Grants.gov* (<http://www.grants.gov/>) account. It is advisable also to go to “manage subscriptions” on *Grants.gov* and sign up to receive automatic updates when amendments to a funding opportunity are posted.

Disclaimer. This NOI does not constitute a solicitation. No applications may be submitted in response to this NOI. Any inconsistency between information within this Notice and the eventual NOFO announcing CHIPS R&D/NAPMP Advanced Packaging awards competition shall be resolved in favor of the NOFO.

Authority. DOC CHIPS activities are authorized by Title XCIX—Creating Helpful Incentives to Produce Semiconductors for America of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283, often referred to as the CHIPS Act).

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2024–14980 Filed 7–8–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE063]

Fisheries of the U.S. Caribbean; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 84 Assessment Webinar VII for U.S Caribbean Yellowtail Snapper and Stoplight Parrotfish.

SUMMARY: The SEDAR 84 assessment process of U.S. Caribbean yellowtail snapper and stoplight parrotfish will consist of a Data Workshop, and a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 84 assessment webinar VII will be held July 26, 2024, from 10 a.m. to 12 p.m., Eastern Time.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; phone: (843) 571–4366; email: Julie.neer@safmc.net.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions

have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Assessment webinar VII are as follows: Panelists will review and discuss and finalize the assessment modeling for stoplight parrotfish in St. Croix.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–14998 Filed 7–8–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE077]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will hold a public webinar meeting.

DATES: The meeting will be held on Thursday, August 1, 2024, from 9 a.m. until 1 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted at www.mafmc.org prior to the meeting.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; www.mafmc.org.

FOR FURTHER INFORMATION CONTACT:

Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will meet via webinar to discuss management measures for all three species. The objectives of this meeting are for the Monitoring Committee to: (1) Review recent stock assessment information, fishery performance, and recommendations from the Advisory Panel, Scientific and Statistical Committee, and staff; (2) Recommend 2025 commercial and recreational annual catch limits, annual catch targets, commercial quotas, and recreational harvest limits for black sea bass; (3) review previously specified 2025 catch and landings limits for summer flounder and scup, and recommend changes if warranted; (4) Review commercial management measures for all three species and

recommend changes if needed; and (5) receive an update on the framework action/addendum to modify the commercial summer flounder mesh exemption programs. Meeting materials will be posted to www.mafmc.org.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–15000 Filed 7–8–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE091]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold four in-person port meetings gathering input on Atlantic king mackerel and Atlantic Spanish mackerel as managed by the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region.

DATES: The port meetings will take place July 30, 2024, August 1, 2024, August 7, 2024, and August 8, 2024. The port meetings will begin at 6 p.m., local time. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES:

Meeting addresses: The public hearings will be held in Pooler, GA; Townsend, GA; Murrells Inlet, SC; Charleston, SC. For specific locations, see **SUPPLEMENTARY INFORMATION**. Please visit the South Atlantic Council website at www.safmc.net for meeting materials and location information.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Christina Wiegand, Fishery Social

Scientist, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: christina.wiegand@safmc.net.

SUPPLEMENTARY INFORMATION: The South Atlantic Fishery Management Council is hosting a series of port meetings along the Atlantic coast throughout 2024 in order to take a focused look at the Atlantic king mackerel and Atlantic Spanish mackerel fisheries. The agenda for the four in-person public hearings is as follows: Council staff will briefly introduce port meetings and the Council's goals and objectives. Attendees will then have the opportunity, through a series of discussion-based breakout groups, to provide input on a variety of issues related to the Atlantic king mackerel and Spanish mackerel fisheries including changing environmental conditions, needed management changes, commercial and recreational fishery dynamics, and the goals and objectives of the Coastal Migratory Pelagics Fishery Management Plan. Information provided during port meetings will be summarized and presented to the Council for use in management decision-making. Additional port meetings will be scheduled along the Atlantic coast throughout the remainder of 2024.

In-Person Locations:

Tuesday, July 30, 2024: National Museum of the Mighty Eighth Air Force, 175 Bourne Ave., Pooler, GA 31322; phone: (912) 748–8888;

Thursday, August 1, 2024: Sapelo Saltwater Fishing Club, 3576 Old Shellman Rd., Townsend, GA 31331;

Wednesday, August 7, 2024: Murrells Inlet Community Center, 4462 Murrells Inlet Rd., Murrells Inlet, SC 29576; phone: (843) 545–3651; and

Thursday, August 8, 2024: South Carolina Department of Natural Resources Outdoor Classroom, 217 Fort Johnson Rd., Charleston, SC 29412; phone: (843) 953–9300.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aid should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–15002 Filed 7–8–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE071]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene an online meeting of its Ad Hoc Equity and Environmental Justice Committee (EEJC) to discuss the NMFS Equity and Environmental Justice (EEJ) Strategy Regional Implementation Plan (Regional Plan). This meeting is open to the public.

DATES: The online meeting will be held Thursday August 1, 2024, from 1 p.m. to 5 p.m., Pacific Time. The scheduled ending time for this meeting is an estimate. The meeting will adjourn when business for the day is completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Angela Forristall, Staff Officer, Pacific Council; telephone: (503) 820–2419.

SUPPLEMENTARY INFORMATION: The EEJC will have an organizational meeting to discuss the NMFS EEJ Strategy Regional Implementation Plan. This committee was formed by the Pacific Council at its April 2023 meeting to assist the Council in addressing EEJ issues and, in particular, to advise the Council on working with NMFS on the Regional Implementation Plan and the geographic strategic plan. No management actions will be decided by the EEJC, but recommendations may be provided to the Pacific Council at its September 18–23, 2024 meeting. A detailed agenda for the webinar will be available on the Pacific Council's website prior to the meeting.

Although non-emergency issues not contained in the meeting agenda may be

discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820-2412) at least 10 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-14999 Filed 7-8-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE078]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Bluefish Monitoring Committee will hold a public webinar meeting.

DATES: The meeting will be held on Friday, August 2, 2024, from 10 a.m. to 12 p.m. For agenda details, see

SUPPLEMENTARY INFORMATION.

ADDRESSES: The meeting will be held via webinar. Webinar connection, agenda items, and any additional information will be available at www.mafmc.org/council-events.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331 or on their website at www.mafmc.org.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526-5255.

SUPPLEMENTARY INFORMATION: The Bluefish Monitoring Committee will meet via webinar on August 2, 2024, from 10 a.m. until 12 p.m., to review previously adopted 2025 commercial and recreational Annual Catch Limits, Annual Catch Targets, commercial quota, and recreational harvest limit for bluefish and recommend changes as appropriate. In addition, the Monitoring Committee will review commercial and recreational management measures and recommend changes, if needed. During this meeting, the Monitoring Committee will consider recent fishery performance as well as recommendations from the Bluefish Advisory Panel, Scientific and Statistical Committee, and Council staff. Meeting materials will be posted to www.mafmc.org.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden at the Council Office, (302) 526-5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-15005 Filed 7-8-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE010]

Fisheries of the South Atlantic, Gulf of Mexico, and Caribbean; Southeast Data, Assessment, and Review (SEDAR) Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of the SEDAR Steering Committee meeting.

SUMMARY: The SEDAR Steering Committee will meet to discuss the SEDAR stock assessment process and assessment schedule. See

SUPPLEMENTARY INFORMATION.

DATES: The SEDAR Steering Committee will meet Monday, July 29, 2024, from 9 a.m. until 5 p.m., Eastern, via webinar. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the SEDAR process. Such adjustments may

result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie Neer (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; www.sedarweb.org.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Program Manager, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571-4366 or toll free (866) SAFMC-10; fax: (843) 769-4520; email: Julie.neer@safmc.net.

SUPPLEMENTARY INFORMATION: The SEDAR Steering Committee provides guidance and oversight of the SEDAR stock assessment program and manages assessment scheduling.

The items of discussion for this meeting are as follows:

SEDAR projects update, SEDAR projects schedule, SEDAR process review, and discussions. The committee will also conduct other business as needed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-14997 Filed 7-8-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Evaluation of Padilla Bay National Estuarine Research Reserve; Notice of Public Meeting; Request for Comments**

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of public meeting and opportunity to comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management, will hold an in-person public meeting to solicit input on the performance evaluation of the Padilla Bay National Estuarine Research Reserve. NOAA also invites the public to submit written comments.

DATES: NOAA will hold an in-person public meeting at 5 p.m. Pacific Daylight Time (PDT) on Tuesday, September 10, 2024. NOAA may close the meeting 10 minutes after the conclusion of public testimony and after responding to any clarifying questions from hearing participants. NOAA will consider all relevant written comments received by Friday, September 20, 2024.

ADDRESSES: Comments may be submitted by one of the following methods:

- **In-Person Public Meeting:** Provide oral comments during the in-person public meeting on Tuesday, September 10, 2024 at 5 p.m. PDT at the Steven Center Conference Room at the Padilla Bay National Estuarine Research Reserve, 10441 Bayview Edison Road, Mount Vernon, WA 98273.
- **Email:** Send written comments to Michael Migliori, Evaluator, NOAA Office for Coastal Management, at czma.evaluations@noaa.gov. Include "Comments on Performance Evaluation of Padilla Bay National Estuarine Research Reserve" in the subject line. NOAA will accept anonymous comments; however, the written comments NOAA receives are considered part of the public record, and the entirety of the comment, including the name of the commenter, email address, attachments, and other supporting materials, will be publicly accessible. Sensitive personally identifiable information, such as account numbers and Social Security numbers, should not be included with the comments. Comments that are not related to the performance evaluation of the Padilla Bay National Estuarine

Research Reserve or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT: Michael Migliori, Evaluator, NOAA Office for Coastal Management, by email at Michael.Migliori@noaa.gov or by phone at (443) 332-8936. Copies of the previous evaluation findings, reserve management plan, and reserve site profile may be viewed and downloaded at <https://coast.noaa.gov/czm/evaluations/>. A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting Michael Migliori.

SUPPLEMENTARY INFORMATION: Section 315(f) of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved national estuarine research reserves. The evaluation process includes holding one or more public meetings, considering public comments, and consulting with interested Federal, State, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the State of Washington has met the national objectives and has adhered to the management plan approved by the Secretary of Commerce, the requirements of section 315(b)(2) of the CZMA, and the terms of financial assistance under the CZMA. When the evaluation is complete, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the final evaluation findings.

Authority: 16 U.S.C. 1461.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2024-15021 Filed 7-8-24; 8:45 am]

BILLING CODE 3510-08-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648-XD855]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Gary Paxton Industrial Park Vessel Haulout Project in Sitka, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the City and Borough of Sitka (CBS) for authorization to take marine mammals incidental to the Gary Paxton Industrial Park Vessel Haulout Project in Sawmill Cove in Sitka, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in the Request for Public Comments section at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than August 8, 2024.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to ITP.Fleming@noaa.gov. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed below.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business

information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kate Fleming, Office of Protected Resources (OPR), NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act (NEPA)

To comply with the NEPA of 1969 (42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the

human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On January 18, 2024, NMFS received a request from CBS for an IHA to take marine mammals incidental to construction associated with the Gary Paxton Industrial Park Vessel Haulout Project in Sawmill Cove in Sitka, Alaska. Following NMFS’ review of the application, CBS submitted a revised version on March 20, 2024, and another on April 27, 2024. The application was deemed adequate and complete on May 20, 2024. CBS’s request is for take of nine species of marine mammals by Level B harassment and, for a subset of those species, by Level A harassment. Neither CBS nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to CBS for similar work (82 FR 47717, October 13, 2017). CBS complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous IHA, and information regarding their monitoring results may be found in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section.

This proposed IHA would cover 1 year of a larger project; CBS intends to request a future take authorization for subsequent facets of the project. In year 1, construction of the following elements would be completed: 150-ton capacity vessel haulout piers, expanded uplands including stormwater collection and treatment, and a vessel washdown pad. The larger multi-year project involves construction of a queuing float, approach dock and gangway, a pile-supported deck area, vessel haulout ramp, an uplands shipyard, and pile anodes. While not proposed to be constructed as part of this project, CBS’s goal is to eventually construct additional haulout piers to accommodate removal of vessels up to 300 tons.

Description of Proposed Activity

Overview

The CBS is proposing to construct a vessel haulout facility at Gary Paxton Industrial Park in Sawmill Cove in Sitka, Alaska. Sitka is home to one of the largest fishing fleets in Alaska, but no public vessel haulout facility has existed in Sitka since March 2022. The project would enable vessels to be hauled out for maintenance, ensuring safety of operating fleet traffic and boosting the local economy through jobs and enterprise at nearby marine service providers. Over the course of 1 year between October 2024 and September 2025, CBS would use vibratory and impact pile driving and vibratory removal to install and extract piles. These methods of pile driving would introduce underwater sounds that may result in take, by Levels A and B harassment, of marine mammals.

Dates and Duration

The proposed IHA would be effective from October 1, 2024, to September 30, 2025. The project would require approximately 62 days of pile driving between October 15 and March 15. In-water construction activities would only occur during daylight hours, and typically over a 10- to 12-hour work day.

Specific Geographic Region

Sawmill Cove is a small body of water located near Sitka, Alaska, at the mouth of Silver Bay, which opens to the Sitka Sound and Gulf of Alaska (see figures 1 and 2 in CBS’s IHA application). Sawmill Cove has a fairly even and shallow seafloor that gradually falls to a depth of approximately 40 meters (m) (131 feet (ft)). To the southeast, Silver Bay is approximately 0.8 kilometers (km) (0.5 miles (mi)) wide, 8.9 km (5.5 mi) long, and 40–85 m (131–279 ft) deep. The bay is uniform with few rock outcroppings or islands. To the southwest, the Eastern Channel opens to Sitka Sound, dropping off to depths of 120 m (400 ft) approximately 1.6 km (1 mi) southwest of the project site.

Sawmill Cove is an active marine commercial and industrial area, which includes a multipurpose, deep-water dock constructed in 2017 to accommodate large vessel services, Silver Bay Seafoods’ processing plant, a Northern Southeast Regional Aquaculture Association hatchery, and other tenants such as Northline Seafoods, Serka Welding and Boat Fabrication, and Island Fever Diving.

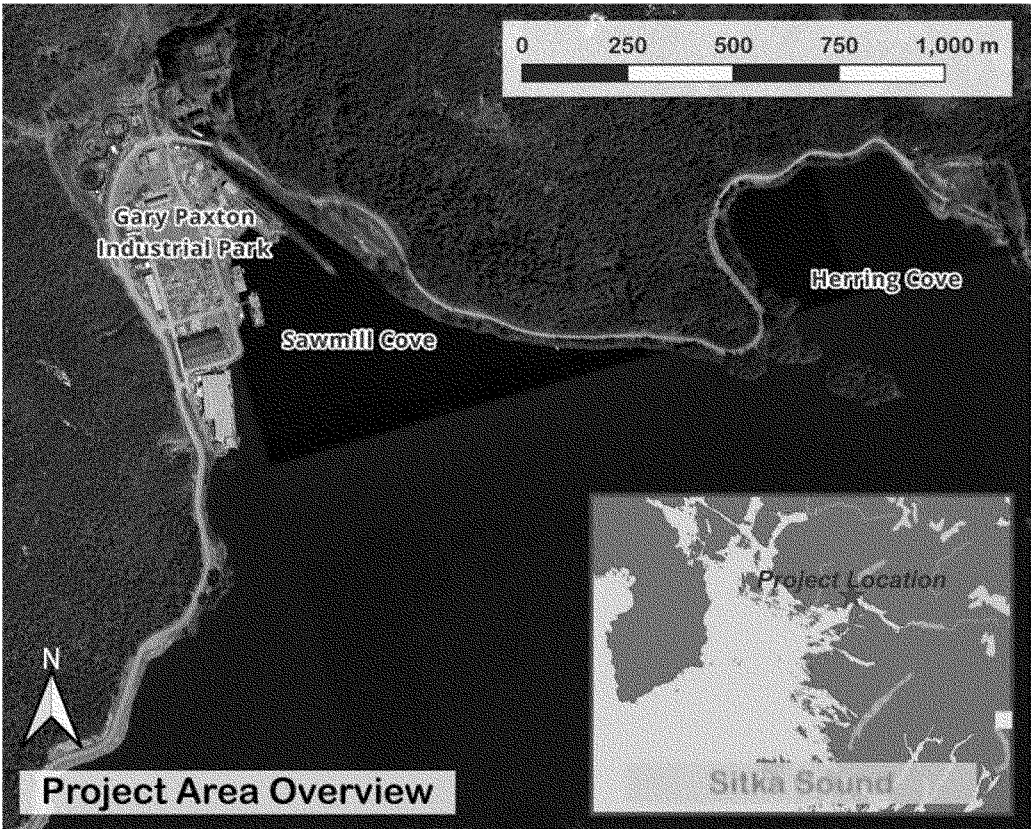


Figure 1. Gary Paxton Industrial Park (GPIP) project area overview (background image from Google Earth 2023).

Detailed Description of the Specified Activity

CBS proposes to construct a vessel haulout facility within the Gary Paxton Industrial Park in Sawmill Cove, Sitka Alaska. Activities to be completed during the period of the proposed IHA include the construction of 150-ton capacity vessel haulout piers, expanded uplands including stormwater collection and treatment, and a vessel washdown pad. Major equipment and materials associated with construction would most likely be mobilized to the project site from Juneau, another southeast Alaska location, or Seattle, Washington. The larger multi-year

project involves construction of a queuing float, approach dock and gangway, a pile-supported deck area, vessel haulout ramp, an uplands shipyard, and pile anodes.

150-Ton Capacity Vessel Haulout Piers

To construct the 150-ton capacity boat haulout piers, 36-inch (in) [91 centimeter (cm)] steel haulout pier support piles, both vertical and battered, would be installed primarily with a vibratory hammer (an American Piledriving Equipment 200-6 or comparable vibratory hammer from another manufacturer). Following vibratory installation, piles would be

proofed with an impact hammer in order to achieve design bearing capacity (a Delmag D-62 diesel impact hammer or equivalent). Up to 24-in (61 cm) diameter steel temporary template pipe piles would be installed to facilitate accurate installation of permanent piles. Temporary piles would be installed and removed using a vibratory hammer. Temporary template piles would only be necessary for vertical support piles; batter piles would be installed utilizing permanent vertical support piles as a template. Following construction of pier superstructures, 24-in diameter steel fender piles would be installed with a vibratory hammer.

TABLE 1—PILE TYPES, INSTALLATION METHODS, AND DURATIONS

Pile size/type	Method	Number of piles	Duration per pile (min)	Strikes per pile	Max piles per day	Days of installation or removal
Haulout Pier Support Pile						
36-in Steel Pipe Pile	Vibratory Installation	20	60	N/A	2	20
	Impact Installation		N/A	2,000	2	

TABLE 1—PILE TYPES, INSTALLATION METHODS, AND DURATIONS—Continued

Pile size/type	Method	Number of piles	Duration per pile (min)	Strikes per pile	Max piles per day	Days of installation or removal
Haulout Pier Batter Pile						
36-in Steel Pipe Pile	Vibratory Installation	4	120	N/A	2	10
	Impact Installation		N/A	3,000	2	
Haulout Pier Fender Pile						
24-in Steel Pipe Pile	Vibratory Installation	6	30	N/A	4	6
Template Pile						
24-in Steel Pipe Pile	Vibratory Installation and Removal.	52	20	N/A	8	26

Expanded Uplands

Uplands expansion would facilitate the construction of the pile-supported 150-ton capacity haulout piers. Expanded uplands would be constructed with armor rock, shot rock borrow (bulk fill), and crushed aggregate base course. Bulk fill would be placed directly on the existing ground surface. When possible, materials would be placed in the dry during low tidal conditions, however, initial fill operations are planned to continue regardless of the level of tide. The bulk fill material would be delivered to the project site by trucks which would end-dump the material into on-site stockpiles for spreading. Bulk fill placement and spreading would be accomplished by track-mounted excavator, bulldozer, or motor grader. Above Mean Low Low Water, material would be placed in lifts of specified thickness. Each lift of material would be compacted with a vibratory drum roller compactor; all compaction operations would be performed when the tide is below the elevation of the work. As each lift of bulk fill material is placed, armor rock would be concurrently placed to protect the embankments from erosion during construction. As with the bulk fill materials, armor rock would be delivered to the project site by trucks and end-dumped into on-site stockpiles. Armor rock would be individually handled, manipulated, and placed on the bulk fill side slopes by a track-mounted excavator, or crane.

A layer of base course would be placed atop the expanded uplands area and compacted, using similar methods to the placement of bulk fill materials.

Stormwater Improvements

Stormwater improvements consisting of storm drain catch basins, utility holes, and associated piping would be installed to control stormwater within

the expanded uplands. The uplands would be graded to facilitate stormwater drainage towards the catch basins installed in various locations throughout the site.

Vessel Washdown Pad and Utility Building

A permanent vessel washdown pad would be installed adjacent to the expanded uplands. A heated piping system would be incorporated into the concrete pad and the washdown pad would be equipped with drainage for vessel wash water. The drainage system would collect wash water used for vessel cleaning in a catch basin incorporated into the washdown pad and send it to a storm filter system containing a grit chamber for filtration of the effluent. All wash water would be discharged into the Sitka municipal sewer.

A 960-ft² utility building would be installed on-site, adjacent to the vessel washdown pad, which would house the water treatment equipment and hydronic boilers for the heat piping system.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (see Proposed Mitigation and Proposed Monitoring and Reporting section).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of CBS's application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/>

[national/marine-mammal-protection/marine-mammal-stock-assessments](https://www.fisheries.noaa.gov/marine-mammal-protection/marine-mammal-stock-assessments)) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Alaska and Pacific SARs. All values presented in table 2 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: <https://www.fisheries.noaa.gov/>

*national/marine-mammal-protection/
marine-mammal-stock-assessments.*

TABLE 2—MARINE MAMMAL SPECIES ¹ LIKELY TO OCCUR NEAR THE PROJECT AREA THAT MAY BE TAKEN BY CBS'S ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴
Order Artiodactyla—Cetacea—Mysticeti (baleen whales)						
<i>Family Eschrichtiidae:</i> Gray Whale	<i>Eschrichtius robustus</i>	Eastern N Pacific	-, -, N	26,960 (0.05, 25,849, 2016).	801	131
<i>Family Balaenopteridae</i> (rorquals): Humpback Whale	<i>Megaptera novaeangliae</i>	Hawai'i	-, -, N	11,278 (0.56, 7,265, 2020).	127	27.09
		Mexico-North Pacific	T, D, Y	N/A (N/A, N/A, 2006) ⁵	UND	0.57
<i>Family Delphinidae:</i> Killer Whale	<i>Orcinus orca</i>	Eastern North Pacific Alaska Resident.	-, -, N	1,920 (N/A, 1,920, 2019) ⁶ .	19	1.3
		Eastern North Pacific Gulf of Alaska, Aleutian Islands and Bering Sea Transient.	-, -, N	587 (N/A, 587, 2012) ⁶	5.9	0.8
		Eastern Northern Pacific North- ern Resident.	-, -, N	302 (N/A, 302, 2018) ⁶	2.2	0.2
		West Coast Transient	-, -, N	349 (N/A, 349, 2018) ⁶	3.5	0.4
Pacific White-Sided Dolphin	<i>Lagenorhynchus obliquidens</i>	N Pacific	-, -, N	26,880 (N/A, N/A, 1990)	UND	0
<i>Family Phocoenidae (por- poises):</i> Harbor Porpoise	<i>Phocoena phocoena</i>	Yakutat/Southeast Alaska Off- shore Waters.	-, -, N	N/A (N/A, N/A, 1997) ⁷	UND	22.2
Order Carnivora—Pinnipedia						
<i>Family Otariidae (eared seals and sea lions):</i> CA Sea Lion	<i>Zalophus californianus</i>	U.S.	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>321
Northern Fur Seal	<i>Callorhinus ursinus</i>	Eastern Pacific	-, D, Y	626,618 (0.2, 530,376, 2019).	11,403	373
Steller Sea Lion	<i>Eumetopias jubatus</i>	Western	E, D, Y	49,837 (N/A, 49,837, 2022) ⁸ .	299	267
		Eastern	-, -, N	36,308 (N/A, 36,308, 2022) ⁹ .	2,178	93.2
<i>Family Phocidae (earless seals):</i> Harbor Seal	<i>Phoca vitulina</i>	Sitka/Chatham Strait	-, -, N	13,289 (N/A, 11,883, 2015).	356	77

¹ Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (<https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies>; Committee on Taxonomy, 2022).

² ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

³ NMFS marine mammal SARs online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

⁴ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

⁵ Abundance estimates are based upon data collected more than 8 years ago and, therefore, current estimates are considered unknown.

⁶ N_{est} is based upon counts of individuals identified from photo-ID catalogs.

⁷ New stock split from Southeast Alaska stock.

⁸ N_{est} is best estimate of counts, which have not been corrected for animals at sea during abundance surveys. Estimates provided are for the U.S. only. The overall N_{min} is 73,211 and overall PBR is 439.

⁹ N_{est} is best estimate of counts, which have not been corrected for animals at sea during abundance surveys. Estimates provided are for the U.S. only.

As indicated above, all 9 species (with 14 managed stocks) in table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the proposed project areas are included in table 1 of the IHA application. Sperm whale, fin whale, North Pacific right whale, minke whale, and Dall's porpoise are other marine mammals that occur in the greater southeast Alaska

area, but they are unlikely to be encountered at the Gary Paxton Industrial Park and thus are not addressed further in this notice.

In addition, the northern sea otter may be found in Sawmill Cove. However, northern sea otter are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Gray Whale

The migration pattern of gray whales appears to follow a route along the western coast of Southeast Alaska, traveling northward from British Columbia through Hecate Strait and Dixon Entrance, passing the west coast of Baranof Island from late March to May and then return south in October and November (Jones *et al.*, 1984; Ford *et al.*, 2013). Gray whales are generally

solitary, traveling alone or in small groups (NMFS, 2022b).

Historically, sightings of gray whales within Sitka Sound were common during the spring herring spawn; however, unusually large numbers of gray whales have been documented in western Sitka Sound near Kruzof Island since 2014 and 2015 [Alaska Department of Fish & Game (ADF&G), 2023; Wild *et al.*, 2023]. It is unclear what has triggered this increase, but researchers believe it may be due to reduced prey availability in other parts of their range. Historical maps show that herring spawn in the eastern channel and Silver Bay in some years (ADF&G, 2023b). Additional historical records from 1964 to 2011 indicate that herring spawn in the Sitka Sound vicinity approximately every 1–3 years (Sill and Lemons, 2019). The most recent report of herring spawning in Sawmill Cove that NMFS is aware of occurred in 2011 (ADF&G, 2023b).

Records of gray whales in the Global Biodiversity Information Facility (GBIF) show 69 sightings reported by the public within and immediately offshore of Sitka Sound in the past 20 years (GBIF, 2023a). Spanning from 1995 to 2000, weekly land-based surveys of marine mammals from Sitka's Whale Park, located at the entrance to Silver Bay, were completed between September and May (Straley and Pendell, 2017). Across 190 hours of monitoring, three gray whales were observed in November. During recent marine mammal surveys associated with construction projects near the project area in Sitka Sound and in Silver Bay, no gray whales were sighted [Turnagain Marine Construction (TMC), 2017; CBS, 2019; Solstice, 2023].

Humpback Whale

Humpback whales congregate in Sitka Sound in the spring to feed on spawning herring (Wild *et al.*, 2023) and again in September through December to feed on more diverse forage (Straley *et al.*, 2018; Wild *et al.*, 2023). During the summer, both herring and humpback whales disperse throughout Sitka Sound and away from the project area (Straley, 2017 pers comm. in Solstice, 2017).

During weekly surveys completed at Sitka's Whale Park between 1995 and 2000, humpback whales were frequently observed in groups of one to four at a rate of 2.18 individuals per day, with peak sightings in November and December (Straley and Pendell, 2017). Similar group sizes were documented during studies assessing the potential influence of humpback whales on wintering pacific herring populations, completed in the fall

(Straley *et al.*, 2018). Groups of 25–30 whales were occasionally recorded in areas outside Silver Bay in the Eastern Channel (Straley and Pendell, 2017). During construction of the Gary Paxton Industrial Park Multipurpose Dock Project in 2017, humpback whales were typically observed in group sizes of two (TMC, 2017). PSOs reported humpbacks whales most frequently between 1,800–2,000 m away, but distances recorded ranged from 500 m to 5,000 m (TMC, 2017).

During monitoring in June 2019 for the O'Connell Bridge Lightering Float Pile Replacement Project (CBS, 2019) within Crescent Bay and the Eastern Channel, no humpback whales observed. Observations during the offshore geotechnical investigation for this project resulted in four sightings of nine total humpback whales during 80 hours of drilling operations between September 20 and 29, 2023. Sightings consisted of one to four whales travelling, foraging, and swimming throughout Silver Bay and into Herring Cove (Solstice, 2023).

Humpback whales in the project area are predominantly of the Hawaii Distinct Population Segment (DPS), which is not ESA-listed. However, based on a comprehensive photo-identification study, individuals from the Mexico DPS, which is listed as threatened, are known to occur in Southeast Alaska. Individuals of different DPSs are known to intermix on feeding grounds; therefore, all waters off the coast of Alaska should be considered to have ESA-listed humpback whales. Approximately 2 percent of all humpback whales in Southeast Alaska and northern British Columbia are of the Mexico DPS, while all others are of the Hawaii DPS (NMFS, 2021).

Killer Whale

Killer whales have been observed in all oceans and seas of the world, but the highest densities occur in colder and more productive waters found at high latitudes. Killer whales are found throughout the North Pacific, and occur along the entire Alaska coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California.

Of the eight recognized killer whale stocks, only the Alaska resident; Northern resident; Gulf of Alaska, Aleutian Islands, and Bering Sea Transient (Gulf of Alaska transient); and the West coast transient stocks are considered in this application because other stocks occur outside the geographic area under consideration. It is estimated that the majority of killer

whales in the project area would be from the Alaska Resident stock, (60.7 percent), followed by the Gulf of Alaska, Aleutian Islands, and Bering Sea stock (18.6 percent), then the West Coast Transient (11.1 percent) and finally the Northern Residents stock (9.6 percent) (Young *et al.*, 2023). The probability of occurrence is estimated by dividing the population of each stock by their combined total population.

Records of killer whales in the GBIF show 84 sightings reported by the public within and immediately outside of Sitka Sound in the past 20 years. During weekly surveys at Whale Park in Sitka between 1995 and 2000, killer whales were “unpredictably” observed in groups of four to eight at a rate of 0.22 individuals per day, with all sightings most frequent in fall and spring (Straley and Pendell, 2017). During recent marine mammal surveys associated with construction projects near the project area in Sitka Sound and in Silver Bay, no killer whales were sighted (TMC, 2017; CBS, 2019; Solstice, 2023).

Pacific White-Sided Dolphin

Pacific white-sided dolphins typically inhabit the open ocean and coastal waters away from shore (NMFS, 2022b). Pacific white-sided dolphins are rare in the inside passageways of Southeast Alaska. Most observations occur off the outer coast or in inland waterways near entrances to the open ocean. However, there are records of pacific white sided dolphins observations in protected inland waters of British Columbia since at least the late 1980s (Morton, 2000; Ashe, 2015) It is thought that Pacific white-sided dolphins could be experiencing a poleward shift in their distribution in response to climate change (Salvadeo *et al.*, 2010; Rone *et al.*, 2017).

During weekly surveys completed at Sitka's Whale Park between 1995 and 2000, Pacific white sided dolphin were rarely observed in groups of around four at a rate of 0.02 individuals per day, with all recorded sightings in February (Straley and Pendell, 2017).

Recent construction monitoring reports of monitoring in Sitka Sound and in Silver Bay show no occurrence of Pacific white-sided dolphins in the project area (TMC, 2017; CBS, 2019; Solstice, 2023).

Harbor Porpoise

The harbor porpoise inhabits temperate, subarctic, and arctic waters. In the eastern North Pacific, harbor porpoises range from Point Barrow, Alaska, to Point Conception, California. Harbor porpoise primarily frequent coastal waters and occur most

frequently in waters less than 100 m deep (Hobbs and Waite, 2010). They may occasionally be found in deeper offshore waters.

Harbor porpoise frequent nearshore waters, but are not common in the project vicinity. During weekly surveys completed at Sitka's Whale Park between 1995 and 2000, harbor porpoises were infrequently observed in groups of about five to eight at a rate of 0.09 individuals per day, with peak sightings in fall and late spring (Straley and Pendell, 2017). During recent marine mammal surveys associated with construction projects near the project area in Sitka Sound and in Silver Bay, no harbor porpoise were sighted (TMC, 2017; CBS, 2019; Solstice, 2023).

California Sea Lion

California sea lions live in coastal waters and on beaches, docks, buoys, and jetties. During the winter, male California sea lions commonly migrate to feeding grounds typically off California, Oregon, Washington, British Columbia, and recently and more rarely, in southeast Alaska (Woodford 2020). Females and pups typically stay close to breeding colonies until the pups have weaned (NMFS 2022b). California sea lions are occasionally sighted across the Gulf of Alaska north to the Pribilof Islands during all seasons of the year (Maniscalco *et al.* 2004).

No research or monitoring reports have indicated sightings of California Sea Lions in the project area (Straley and Pendell, 2017; TMC, 2017; CBS, 2019; Solstice, 2023). However, records of California sea lions in the GBIF show 22 sightings reported by the public within and immediately offshore of Sitka Sound in the past 20 years, suggesting a rare possibility of occurrence.

Northern Fur Seal

Northern fur seals are typically found in offshore waters outside of the breeding season, although females and young males may be found closer to shore as they move to southern waters. In Southeast Alaska and British Columbia, they are known to occasionally haul out at sea lion rookeries (Carretta *et al.*, 2022; Committee on Endangered Wildlife in Canada (COSEWIC), 2010).

Northern fur seals are considered rare in the project area. Only four sightings were included GBIF records within Sitka Sound and nearby offshore waters in the past 20 years, largely from agency surveys reported in Ocean Biodiversity Information System-Spatial Ecology Analysis of Megavertebrate Populations (GBIF, 2023a). Additionally, during

weekly surveys at Whale Park in Sitka between 1995 and 2000, no occurrences of northern fur seals were reported (Straley and Pendell, 2017), nor were they documented during monitoring completed for recent construction Sitka Sound and in Silver Bay show (TMC, 2017; CBS, 2019; Solstice, 2023). However, a female northern fur seal pup was reported swimming "erratically" near the shore in Sitka in January 2023 before being transported to the Alaska Sea Life Center for medical treatment (McKenney, 2023).

Steller Sea Lion

The majority of Steller sea lions that inhabit Southeast Alaska are part of the eastern DPS; however, branded individuals from the western DPS make regular movements across the 144° longitude boundary to the northern "mixing zone" haulouts and rookeries within southeast Alaska (Jemison *et al.*, 2013). While haulouts and rookeries in the northern portion of Southeast Alaska may be important areas for western DPS animals, there continues to be little evidence that their regular range extends to the southern haulouts and rookeries in Southeast Alaska (Jemison *et al.*, 2018). However, genetic data analyzed in Hastings *et al.* (2020) indicated that up to 1.2 percent of Steller sea lions near the project area may be members of the western DPS.

Steller sea lions are common within Sitka Sound and are likely to be found within the project area year-round. Steller sea lions were observed every month of monitoring (September to May) conducted at Whale Park between 1995 and 2000 (Straley and Pendell, 2017). Typical group sizes ranged from 1–2 (though sometimes over 100) at a rate of 3.46 individuals per day, with peak sightings in November, January, and February.

In 2017, during construction of the Gary Paxton Industrial Park Multipurpose Dock Project in the same area, an average of more than six Steller sea lions per day were observed during 22 days of in-water construction per day in October and November. Mean group sizes recorded were two individuals. During approximately 30 hours of monitoring in June 2019 for the O'Connell Bridge Lightering Float Pile Replacement Project, a total of 42 Steller sea lions were observed within Crescent Bay and the Eastern Channel in group sizes of 1 to 3 individuals. Several of these individuals were recorded as approaching or leaving Silver Bay (CBS, 2019). Finally, observations during the offshore geotechnical investigation for this project resulted in 79 sightings of 99 total Steller sea lions during 80 hours

of drilling operations between September 20 and 29, 2023. Sightings generally consisted of one to three sea lions swimming largely within Sawmill Cove (Solstice, 2023). PSOs observed Steller sea lions at distances ranging between 30 m to as far as 700 m from the project site, with 10 percent of individuals coming within less than 60 m of the project site, and over a third of sightings occurring between 60 m and 130 m (Solstice, 2023).

The project action area does not overlap Steller sea lion critical habitat. The Biorca Island haulout is the closest designated critical habitat and is well over 25 km southwest of the project area. There are no known haulouts within the project area.

Harbor Seal

Harbor seals are common in the inside waters of southeastern Alaska, including within the vicinity of the project area. The species were observed during most months of monitoring (September through May) from data collected at Whale Park between 1995 and 2000, except in December and May (Straley and Pendell, 2017). Harbor seals were frequently observed in groups of one to two. Harbor seals were also commonly observed during recent construction projects completed in the area, in similar group sizes (one to two) (TMS, 2017; CBS, 2019; Solstice, 2023). Similar to Steller sea lions, harbor seals may linger in the project area for multiple days. However, no designated haulouts are within close proximity.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65-decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-

frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from

Southall *et al.* (2007) retained. Marine mammal hearing groups and their

associated hearing ranges are provided in table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS
[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchids, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>)	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65-dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.*, 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth *et al.*, 2013). This division between phocid and otariid pinnipeds is now reflected in the updated hearing groups proposed in Southall *et al.* 2019.

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and

far [American National Standards Institute (ANSI), 1995]. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.*, vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise “ambient” or “background” sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact and vibratory pile driving and removal. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.*, explosions, gunshots, sonic booms, impact pile

driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; National Institute of Occupational Safety and Health (NIOSH), 1998; NMFS, 2018). Non-impulsive sounds (*e.g.*, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998; NMFS, 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward, 1997, in Southall *et al.*, 2007).

Two types of hammers would be used on this project: impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.*, 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.*, 2005).

The likely or possible impacts of CBS's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of equipment and personnel; however, any impacts to marine mammals are expected to be primarily acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal.

Acoustic Effects

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal is the means by which marine mammals may be harassed from CBS's specified activity. In general, animals exposed to natural or anthropogenic sound may experience behavioral, physiological, and/or physical effects, ranging in magnitude from none to severe (Southall *et al.*, 2007, 2019). In general, exposure to pile driving noise has the potential to result in behavioral reactions (e.g., avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior) and, in limited cases, an auditory threshold shift (TS). Exposure to anthropogenic noise can also lead to non-observable physiological responses such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving noise on marine mammals are dependent on several factors, including, but not limited to, sound type (e.g., impulsive vs. non-impulsive), the species, age and sex class (e.g., adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.*, 2004; Southall *et al.*, 2007). Here we discuss physical auditory effects (TSs) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced TS as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of TS is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (e.g., impulsive or non-impulsive), likelihood an individual would be

exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (i.e., spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (i.e., how animal uses sound within the frequency band of the signal; e.g., Kastelein *et al.*, 2014), and the overlap between the animal and the source (e.g., spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Available data from humans and other terrestrial mammals indicate that a 40-dB TS approximates PTS onset (Ward *et al.*, 1958, 1959; Ward 1960; Kryter *et al.*, 1966; Miller, 1974; Ahroon *et al.*, 1996; Henderson *et al.*, 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.*, 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (Southall *et al.*, 2007), a TTS of 6 dB is considered the minimum TS clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.*, 2000; Finneran *et al.*, 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum} , the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum} , the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (i.e., recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to

serious (similar to those discussed in *Masking*, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 2013). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. For cetaceans, published data on the onset of TTS are limited to captive bottlenose dolphin (*Tursiops truncatus*), beluga whale, harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaticorientalis*) (Southall *et al.*, 2019). For pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals (*Mirounga angustirostris*), bearded seals (*Erignathus barbatus*) and California sea lions (*Zalophus californianus*) (Kastak *et al.*, 1999, 2007; Kastelein *et al.*, 2019b, 2019c, 2021, 2022a, 2022b; Reichmuth *et al.*, 2019; Sills *et al.*, 2020). TTS was not observed in spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to single airgun impulse sounds at levels matching previous predictions of TTS onset (Reichmuth *et al.*, 2016). These studies examine hearing thresholds measured in marine mammals before and after exposure to intense or long-duration sound exposures. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of threshold shift at various post-exposure times.

The amount and onset of TTS depends on the exposure frequency.

Sounds at low frequencies, well below the region of best sensitivity for a species or hearing group, are less hazardous than those at higher frequencies, near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.*, a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.*, 2019a, 2019c). Note that in general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). In addition, TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Mooney *et al.*, 2009; Finneran *et al.*, 2010; Kastelein *et al.*, 2014, 2015). This means that TTS predictions based on the total, cumulative SEL will overestimate the amount of TTS from intermittent exposures, such as sonars and impulsive sources. Nachtigall *et al.* (2018) describe measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale (*Pseudorca crassidens*)) when a relatively low sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echolocating animals (including odontocetes) might have anatomical specializations that might allow for conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle ear structures and placement of inner ear structures (Ketten *et al.*, 2021). Data available on noise-induced hearing loss for mysticetes are currently lacking (NMFS, 2018). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels

above that inducing mild TTS (*e.g.*, a 40-dB threshold shift approximates PTS onset (Kryter *et al.*, 1966; Miller, 1974), while a 6-dB threshold shift approximates TTS onset (Southall *et al.*, 2007, 2019). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulsive sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.*, 2007, 2019). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Activities for this project include impact and vibratory pile driving and removal. There would likely be pauses in activities producing the sound during each day. Given these pauses and the fact that many marine mammals are likely moving through the project areas and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving also has the potential to behaviorally disturb marine mammals. Generally speaking, NMFS considers a behavioral disturbance that rises to the level of harassment under the MMPA a non-minor response—in other words, not every response qualifies as behavioral disturbance, and for responses that do, those of a higher level, or accrued across a longer duration, have the potential to affect foraging, reproduction, or survival. Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.*, minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses may include changing durations of surfacing and dives, changing direction and/or speed; reducing/increasing vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); eliciting a visible startle response or aggressive behavior (such as tail/fin slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*,

species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.*, Richardson *et al.*, 1995; Wartzok *et al.*, 2004; Southall *et al.*, 2007, 2019; Weilgart, 2007; Archer *et al.*, 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics associated with the sound source (*e.g.*, whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) and Gomez *et al.* (2016) for reviews of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2004). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a "progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial," rather than as, more generally, moderation in response to human disturbance (Bejder *et al.*, 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure.

As noted above, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; Wartzok *et al.*, 2004; National Research Council (NRC), 2005). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.*, 1997; Finneran *et al.*, 2003). Observed responses of wild marine mammals to loud pulsed sound sources (*e.g.*, seismic airguns) have been varied but often consist of avoidance behavior or other behavioral changes (Richardson *et al.*, 1995; Morton and Symonds, 2002; Nowacek *et al.*, 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (e.g., Frankel and Clark, 2000; Costa *et al.*, 2003; Ng and Leung, 2003; Nowacek *et al.*, 2004; Goldbogen *et al.*, 2013a, 2013b). Variations in dive behavior may reflect interruptions in biologically significant activities (e.g., foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (e.g., bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (e.g., Croll *et al.*, 2001; Nowacek *et al.*, 2004; Madsen *et al.*, 2006; Yazvenko *et al.*, 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (e.g., Kastelein *et al.*, 2001, 2005, 2006; Gailey *et al.*, 2007). For example, harbor porpoise' respiration rate increased in response to pile driving sounds at and above a received broadband SPL of 136 dB (zero-peak SPL: 151 dB re 1 μ Pa; SEL of a single strike: 127 dB re 1 μ Pa²-s) (Kastelein *et al.*, 2013).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.*, 2000; Fristrup *et al.*, 2003) or vocalizations (Foote *et al.*, 2004), respectively, while North Atlantic right whales (*Eubalaena glacialis*) have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.*, 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.*, 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.*, 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (e.g., Bowles *et al.*, 1994; Goold, 1996; Stone *et al.*, 2000;

Morton and Symonds, 2002; Gailey *et al.*, 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (e.g., Blackwell *et al.*, 2004; Bejder *et al.*, 2006; Teilmann *et al.*, 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (e.g., directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996; Bowers *et al.*, 2018). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (England *et al.*, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (i.e., when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fishes and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (e.g., Beauchamp and Livoreil, 1997; Fritz *et al.*, 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (e.g., decline in body condition) and subsequent reduction in reproductive success, survival, or both (e.g., Harrington and Veitch, 1992; Daan *et al.*, 1996; Bradshaw *et al.*, 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a 5-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than

one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than 1 day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). Note that there is a difference between multi-day substantive (*i.e.*, meaningful) behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

During a dock replacement project completed at this site in 2017, monitors observed marine mammals during construction activities (*i.e.*, vibratory or impact installation 30-in and 48-in steel piles; and vibratory removal of 16-in wood piles) on 22 days between October 9 and November 9 (TMC, 2017). In most cases behaviors were not reported, but there is some information to indicate that during pile driving a Steller sea lion was observed feeding, and humpback whales were observed moving through the project area to the mouth of the bay or to the inner bay. We expect similar behavioral responses of marine mammals to CBS's specified activity for this proposed project. That is, disturbance, if any, is likely to be temporary and localized (*e.g.*, small area movements).

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.*, Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction,

altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.*, Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.*, 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and “distress” is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.*, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.*, 2002b) and, more rarely, studied in wild populations (*e.g.*, Romano *et al.*, 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as “distress.” In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Auditory Masking. Since many marine mammals rely on sound to find prey, moderate social interactions, and facilitate mating (Tyack, 2008), noise from anthropogenic sound sources can interfere with these functions, but only if the noise spectrum overlaps with the hearing sensitivity of the receiving marine mammal (Southall *et al.*, 2007; Clark *et al.*, 2009; Hatch *et al.*, 2012). Chronic exposure to excessive, though

not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.*, 2009). Acoustic masking is when other noises such as from human sources interfere with an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.*, those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995; Erbe *et al.*, 2016). Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.*, signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.*, sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions (Hotchkiss and Parks, 2013).

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is human-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect (though not necessarily one that would be associated with harassment).

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.*, Clark *et al.*, 2009) and may result in energetic or other

costs as animals change their vocalization behavior (e.g., Miller *et al.*, 2000; Foote *et al.*, 2004; Parks *et al.*, 2007; Di Iorio and Clark, 2010; Holt *et al.*, 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.*, 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Hotchkiss and Parks, 2013). Masking can be tested directly in captive species (e.g., Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (e.g., Branstetter *et al.*, 2013).

Marine mammals at or near the proposed CBS project site may be exposed to anthropogenic noise which may be a source of masking. Vocalization changes may result from a need to compete with an increase in background noise and include increasing the source level, modifying the frequency, increasing the call repetition rate of vocalizations, or ceasing to vocalize in the presence of increased noise (Hotchkiss and Parks, 2013). For example, in response to loud noise, beluga whales may shift the frequency of their echolocation clicks to prevent masking by anthropogenic noise (Tyack, 2000; Eickmeier and Vallarta, 2022).

Masking is more likely to occur in the presence of broadband, relatively continuous noise sources such as vibratory pile driving. Energy distribution of pile driving covers a broad frequency spectrum, and sound from pile driving would be within the audible range of pinnipeds and cetaceans present in the proposed action area. While some construction during the CBS's activities may mask some acoustic signals that are relevant to the daily behavior of marine mammals, the short-term duration and limited areas affected make it very unlikely that the fitness of individual marine mammals would be impacted.

Airborne Acoustic Effects—Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance,

anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been “taken” because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Marine Mammal Habitat Effects

The project would occur in an active marine commercial and industrial area. The new facility will consist primarily of new structures though an existing boat ramp will be filled. Construction activities at the Gary Paxton Industrial Park could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water SPLs and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see *Masking* discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During vibratory and impact pile driving, elevated levels of underwater noise would ensonify a portion of Eastern Channel and Silver Bay, where both fish and mammals occur and could affect foraging success.

Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound. These sounds would not be detectable at the nearest known Steller sea lion and harbor sea haulouts, which are well beyond the maximum distance of predicted in-air acoustical disturbance.

Water Quality—Temporary and localized reduction in water quality would occur as a result of in-water construction activities. Most of this effect would occur during the installation and removal of piles when bottom sediments are disturbed. The installation and removal of piles would disturb bottom sediments and may cause a temporary increase in suspended sediment in the project area. During pile removal, sediment attached

to the pile moves vertically through the water column until gravitational forces cause it to slough off under its own weight. The small resulting sediment plume is expected to settle out of the water column within a few hours. Studies of the effects of turbid water on fish (marine mammal prey) suggest that concentrations of suspended sediment can reach thousands of milligrams per liter before an acute toxic reaction is expected (Burton, 1993).

Effects to turbidity and sedimentation are expected to be short-term, minor, and localized. Suspended sediments in the water column should dissipate and quickly return to background levels in all construction scenarios. Turbidity within the water column has the potential to reduce the level of oxygen in the water and irritate the gills of prey fish species in the proposed project area. However, turbidity plumes associated with the project would be temporary and localized, and fish in the proposed project area would be able to move away from and avoid the areas where plumes may occur. Therefore, it is expected that the impacts on prey fish species from turbidity, and therefore on marine mammals, would be minimal and temporary. In general, the area likely impacted by the proposed construction activities is relatively small compared to the available marine mammal habitat in Silver Bay, and does not include any areas of particular importance.

In-Water Construction Effects on Potential Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (e.g., crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (e.g., Zelick *et al.*, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.*, 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage,

barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (e.g., feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (e.g., Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (e.g., Fewtrell and McCauley, 2012; Pearson *et al.*, 1992; Skalski *et al.*, 1992; Santulli *et al.*, 1999; Paxton *et al.*, 2017). However, some studies have shown no or slight reaction to impulse sounds (e.g., Pena *et al.*, 2013; Wardle *et al.*, 2001; Jorgenson and Gyselman, 2009; Cott *et al.*, 2012). More commonly, though, the impacts of noise on fish are temporary.

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.*, 2012b; Casper *et al.*, 2013).

The greatest potential impact to fishes during construction would occur during impact pile installation of 24-in and 36-in steel pipe piles, which is estimated to occur on up to 30 days for a maximum of 6,000 strikes per day. In-water construction activities would only occur during daylight hours, allowing fish to forage and transit the project area in the evening. Vibratory pile driving

would possibly elicit behavioral reactions from fishes such as temporary avoidance of the area but is unlikely to cause injuries to fishes or have persistent effects on local fish populations. Construction also would have minimal permanent and temporary impacts on benthic invertebrate species, a marine mammal prey source. In addition, it should be noted that the area in question is low-quality habitat since it is already highly developed and experiences a high level of anthropogenic noise from normal operations and other vessel traffic. In general, any negative impacts on marine mammal prey species are expected to be minor and temporary.

Fish populations in the proposed project area that serve as marine mammal prey could be temporarily affected by noise from pile installation and removal. The frequency range in which fishes generally perceive underwater sounds is 50 to 2,000 Hz, with peak sensitivities below 800 Hz (Popper and Hastings, 2009). Fish behavior or distribution may change, especially with strong and/or intermittent sounds that could harm fishes. High underwater SPLs have been documented to alter behavior, cause hearing loss, and injure or kill individual fish by causing serious internal injury (Hastings and Popper, 2005).

The most likely impact to fish from pile driving activities in the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of individual pile driving events.

In-Water Construction Effects on Potential Foraging Habitat—The areas likely impacted by the project are relatively small compared to the available habitat in adjacent Sitka Sound and does not include any BIA's or ESA-designated critical habitat. The total seafloor area affected by pile installation and removal and the new dock footprints is a small area compared to the vast foraging area available to marine mammals in the area. Pile driving and removal at the project site would not obstruct long-term movements or migration of marine mammals.

Avoidance by potential prey (i.e., fish or, in the case of transient killer whales, other marine mammals) of the immediate area due to the temporary

loss of this foraging habitat is also possible. The duration of fish and marine mammal avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by fish or marine mammals of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent adverse effect on any fish habitat, or populations of fish species. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform NMFS' consideration of "small numbers," the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (i.e., pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for mysticetes, high frequency species and

phocids because predicted auditory injury zones are larger than for mid-frequency species and otariids. Auditory injury is unlikely to occur for other groups except Steller sea lions because this species is expected to commonly occur in close proximity to the project area. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (e.g., previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals

would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed by varying degrees by other factors related to the source or exposure context (e.g., frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (e.g., bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (e.g., Southall *et al.*, 2007, 2021; Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μ Pa)) for continuous (e.g., vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μ Pa for non-explosive impulsive (e.g., seismic airguns) or intermittent (e.g., scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment

thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

CBS's proposed activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μ Pa is/are applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). CBS's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (continuous pile driving) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PTS

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_E,LF,24h$: 183 dB	Cell 2: $L_E,LF,24h$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_E,MF,24h$: 185 dB	Cell 4: $L_E,MF,24h$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_E,HF,24h$: 155 dB	Cell 6: $L_E,HF,24h$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_E,PW,24h$: 185 dB	Cell 8: $L_E,PW,24h$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_E,OW,24h$: 203 dB	Cell 10: $L_E,OW,24h$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this table, thresholds are abbreviated to reflect ANSI standards (ANSI, 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus

additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.*, pile driving and removal).

The project includes vibratory pile installation and removal, and impact pile driving. Source levels for these

activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Source levels for each pile size and activity each year are presented in table 5. Source levels for vibratory installation and removal of piles of the same diameter are assumed to be the same.

TABLE 5—ESTIMATES OF MEAN UNDERWATER SOUND LEVELS * GENERATED DURING VIBRATORY AND IMPACT PILE INSTALLATION AND VIBRATORY PILE REMOVAL

Pile driving method	Pile type	Pile size (in.)	dB RMS	dB peak	dB SEL	Reference
Impact	Steel Pipe Support Pile	36	193	210	183	Caltrans 2015, 2020.
Vibratory Installation and Extraction.	Steel Pipe Batter Pile	36	166	N/A	N/A	NMFS 2023 Calculations.
	Steel Pipe Support					
	Steel Pipe Batter	24	163	N/A	N/A	NMFS 2023 Calculations.
	Steel Pipe Fender					
	Steel Pipe Template					

Note: dB peak = peak sound level; rms = root mean square; SEL = sound exposure level.

* All sound levels are referenced at 10 m.

TL is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. *TL* parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater *TL* is:

$$TL = B \times \log_{10} (R_1/R_2),$$

where

TL = transmission loss in dB

B = transmission loss coefficient

*R*₁ = the distance of the modeled SPL from the driven pile, and

*R*₂ = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured *TL*,

a practical spreading value of 15 is used as the *TL* coefficient in the above formula. Site-specific *TL* data for the Sitka Sound are not available; therefore, the default coefficient of 15 is used to determine the distances to the Level A harassment and Level B harassment thresholds.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions

included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as pile driving, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported below.

TABLE 6—USER SPREADSHEET INPUTS

	Vibratory				Impact	
	36-in haulout pier support pile	36-in haulout pier batter pile	24-in haulout pier fender pile	24-in template pile	36-in haulout pier support pile	36-in haulout pier batter pile
Spreadsheet Tab Used Source Level (SPL) Transmission Loss Coefficient Weighting Factor Adjustment (kHz) Activity Duration per day (minutes) Number of strikes per pile Number of piles per day Distance of sound pressure level measurement	Installation			Installation or removal	Installation	
	A.1) Vibratory Pile Driving				E.1) Impact Pile Driving	
	166 RMS		163 RMS		183 SEL	
	15					
	2.5				2	
	60	120	30	20	.....	.....
					2,000	3,000
	2				4	8
10						

TABLE 7—LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS AND ASSOCIATED AREAS FROM VIBRATORY AND IMPACT PILE DRIVING AND VIBRATORY REMOVAL

Pile size/type	Method	Level A harassment: isopleths (m), areas (<i>km</i> ²)					Level B harassment: isopleth (m). areas (<i>km</i> ²)
		LF	MF	HF	PW	OW	
Haulout Pier Support Pile							
36-in steel pipe pile	Vibratory Installation	23.4, (<i>0.006</i>)	2.1, (<i>0.001</i>)	34.5, (<i>0.009</i>)	14.2, (<i>0.004</i>)	1.0, (<i>0.001</i>)	11,659, (<i>9.41</i>)
	Impact Installation	2,516, (<i>3.13</i>)	89.5, (<i>0.022</i>)	2,997, (<i>3.64</i>)	1,347, (<i>1.49</i>)	98, (<i>0.024</i>)	1,585, (<i>1.94</i>)
Haulout Pier Batter Pile							
36-in Steel Pipe Pile	Vibratory Installation	37.1, (<i>0.010</i>)	3.3, (<i>0.003</i>)	54.8, (<i>0.013</i>)	22.5, (<i>0.006</i>)	1.6, (<i>0.001</i>)	11,659, (<i>9.41</i>)
	Impact Installation	3,297, (<i>3.97</i>)	117.3, (<i>0.029</i>)	3,928, (<i>4.64</i>)	1,765, (<i>2.24</i>)	128, (<i>0.032</i>)	1,585, (<i>1.94</i>)
Haulout Pier Fender Pile							
24-in Steel Pipe Pile	Vibratory Installation	14.7, (<i>0.004</i>)	1.3, (<i>0.001</i>)	21.8, (<i>0.006</i>)	9.0, (<i>0.003</i>)	0.6, (<i>0.001</i>)	7,356, (<i>7.61</i>)
Template Pile							
24-in Steel Pipe Pile	Vibratory Installation and Removal.	17.9, (<i>0.005</i>)	1.6, (<i>0.001</i>)	26.4, (<i>0.008</i>)	10.9, (<i>0.003</i>)	0.8, (<i>0.001</i>)	7,356, (<i>7.61</i>)

Marine Mammal Occurrence and Take Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

Additionally, we describe how the occurrence information is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization. Available information regarding marine mammal occurrence in the vicinity of the project area includes site-specific and nearby survey information and historic data sets. Prior data sets consulted included: (1) Protected Species Observer (PSO) monitoring completed at the project site on 8 days between September 20 and 29, 2023 during the geotechnical investigation preceding this project (Solstice, 2023), (2) PSO monitoring completed at the project site on 22 days between October and November 2017 during the Multipurpose Dock Project (TMC, 2017), (3) PSO monitoring completed at O'Connell Bridge (approximately 7 km to the east of the project site) on 4 days in June 2019 (CBS, 2019); (4) Land-based surveys conducted at Sitka's Whale Park completed weekly between September and May 1995–2000 (Straley and Pendell (2017)); and, (5) data available on the GBIF (see IHA application for further details).

To estimate take, CBS referred to the above referenced data sets to estimate takes per day for each species and multiplied this factor by the total number of construction days. NMFS finds it more appropriate to describe the take estimate inputs according to a daily occurrence probability in which groups

per day and group size are estimated for each species and multiplied by the number of days of each type of pile driving activity. The equation used to estimate take by Level B harassment for all species is:

$$\text{Exposure Estimate} = \text{group size} \times \text{groups per day} \times \text{days of pile driving activity}.$$

CBS proposes to implement shutdown zones for mid-frequency cetaceans and otariids (except Steller sea lions) that meet or exceed the Level A harassment isopleths for all activities. For phocids, high frequency cetaceans, and low-frequency cetaceans, the calculated Level A harassment zones exceed the proposed shutdown zones during impact installation of 36-in steel piles, planned to occur on 30 construction days. Because the best available abundance estimates for these species cover the general region of Sitka Sound and Silver Bay, estimates of take by Level A harassment were based on the maximum predicted Level B isopleth for each pile type, typically from vibratory pile driving. In the absence of density data, best available monitoring data for the general area were used to estimate take by Level A harassment. Specifically, to calculate estimated take by Level A harassment for these species, we proportionally compared, by hearing group, the portion of the largest Level A harassment area (km²) that exceeds the planned shutdown zone area (km²) to the area (km²) of the largest Level B harassment zone across that pile type (typically from vibratory pile driving). This ratio was then multiplied by the group size, daily sightings, and number of construction days, according to the following equation:

$$\text{Take by Level A harassment} = \text{Level A harassment area (km}^2\text{)} / \text{Level B harassment area (km}^2\text{)} \times \text{group size} \times \text{groups per day} \times \text{days of pile driving}.$$

For Steller sea lions, during impact pile driving of 24-in and 36-in steel pipe piles, the shutdown zone would be established at 60 m rather than the larger Level A harassment isopleths (100 m and 130 m, respectively) due to practicability; local monitoring data suggests that Steller sea lions frequently occur within close proximity of the project site. The method described above did not produce an estimate of take by Level A harassment consistent with the best available data for this species at the project location. Therefore, recent monitoring data collected at this site (Solstice, 2023), were used as the basis of calculating take by Level A harassment. The proportion of Steller sea lions detected between 60 m and 130 m was multiplied by group size, number of daily sightings, and multiplied by the number of construction days when impact pile driving is proposed according to this equation:

$$\text{Take by Level A harassment} = \text{group size} \times \text{groups per day} \times \text{days of impact pile driving activity} \times \text{proportion of Steller sea lions observed occurring between 60–130 m during geotechnical drilling}.$$

Proposed take estimates were rounded up to the nearest whole number in table 8.

Gray Whale

CBS requested take by Level B harassment of 31 gray whales, based on an estimated 1 gray whale every 2 days for 62 construction days. However,

during weekly surveys conducted from September to May between 1995 and 2000, gray whales were infrequently observed in groups of three from Whale Park. As such, NMFS finds it more appropriate to propose to authorize 1 group of 3 gray whales every 14 construction days ($62/14$ construction days = 4.4 2-week construction week periods), resulting in 14 takes by Level B harassment (1 group $\times$ 3 gray whales $\times$ 4.4 construction periods = 13.2 takes by Level B harassment).

The proposed shutdown zone exceeds the calculated Level A harassment zone except during impact pile driving of 36-in steel piles (support and battered), estimated across 30 construction days. As such, it is possible that gray whales may occur in the Level A harassment zone and stay long enough to incur PTS before exiting. For 36-in support piles, the ratio of the Level A harassment area (km^2) that exceeds the shutdown zone to the maximum predicted Level B harassment area (km^2) is 0.06. This activity is estimated to take place on 20 construction days. For 36-in batter piles, the ratio of the Level A harassment area (km^2) that exceeds the shutdown zone to the Level B harassment area is 0.16. This activity is estimated to take place on 10 construction days. As such, 3 takes by Level A harassment are estimated $[(0.06 \times 4.4 \text{ construction periods} \times 1 \text{ group} \times 3 \text{ gray whales}) + (0.16 \times 4.4 \text{ construction periods} \times 1 \text{ group} \times 3 \text{ gray whales}) = 2.9 \text{ takes by Level A harassment}]$.

Any individuals exposed to the higher levels associated with the potential for PTS closer to the source might also be behaviorally disturbed, however, for the purposes of quantifying take we do not count those exposures of one individual as a take by both Level A harassment take and Level B harassment. Therefore, takes by Level B harassment calculated as described above were further modified to deduct the proposed amount of take by Level A harassment. Therefore, NMFS proposes to authorize 3 takes by Level A harassment and 11 takes by Level B harassment for gray whale, for a total of 14 takes. When allocating take across stocks, take estimates are rounded up to the nearest whole number.

Humpback Whale

CBS requested take by Level B harassment of 248 humpback whales, based on an estimated 4 humpback whales occurring every 1 construction day for 62 construction days. NMFS concurs with this take estimate, acknowledging that two groups of two humpback whales occurring each construction day is reasonable based on

previous monitoring data (2 groups $\times$ 2 humpback whales $\times$ 62 construction days = 248 takes by Level B harassment of humpback whale).

The proposed shutdown zone exceeds the calculated Level A harassment zone except during impact pile driving of 36-in steel piles (support and battered), estimated across 30 construction days. As such, it is possible that humpback whales may occur in the Level A harassment zone and stay long enough to incur PTS before exiting. For 36-in support piles, the ratio of the Level A harassment area (km^2) that exceeds the shutdown zone to the maximum predicted Level B harassment area (km^2) is 0.06. This activity is estimated to take place on 20 construction days. For 36-in batter piles, the ratio of the Level A harassment area (km^2) that exceeds the shutdown zone to the Level B harassment area is 0.16. This activity is estimated to take place on 10 construction days. As such, 12 takes by Level A harassment are estimated $[(0.06 \times 20 \text{ construction days} \times 2 \text{ groups} \times 2 \text{ humpback whales}) + (0.16 \times 10 \text{ construction days} \times 2 \text{ groups} \times 2 \text{ humpback whales}) = 11.2 \text{ takes by Level A harassment}]$.

Any individuals exposed to the higher levels associated with the potential for PTS closer to the source might also be behaviorally disturbed, however, for the purposes of quantifying take we do not count those exposures of one individual as a take by both Level A harassment take and Level B harassment. Therefore, takes by Level B harassment calculated as described above were further modified to deduct the proposed amount of take by Level A harassment. Therefore, NMFS proposes to authorize 12 takes by Level A harassment and 236 takes by Level B harassment for humpback whale, for a total of 248 takes. When allocating take across stocks, take estimates are rounded up to the nearest whole number.

Killer Whale

CBS requested take by Level B harassment of 32 killer whales, based on an estimated 1 killer whale occurring every 2 construction days for 62 construction days. However, because killer whales were unpredictably observed from Whale Park in groups of 4–8 during weekly surveys conducted from September to May between 1995 and 2000, NMFS finds it more appropriate to propose to authorize 1 group of 8 killer whales every 7 construction days ($62/7$ construction days = 8.9 construction weeks), resulting in 71 takes by Level B harassment (1 group $\times$ 8 killer whales $\times$ 8.9 construction weeks = 71 takes by

Level B harassment). No takes by Level A harassment were requested or are proposed for authorization.

Pacific White-Sided Dolphin

CBS requested take by Level B harassment of 16 Pacific white-sided dolphin, based on an estimated 1 Pacific white-sided dolphin occurring every 4 construction days for 62 construction days. However, Pacific white-sided dolphin were rarely observed from Whale Park in groups of four during weekly surveys conducted from September to May between 1995 and 2000. As such, NMFS finds it more appropriate to propose to authorize 1 group of 4 Pacific white-sided dolphin every 14 construction days ($62/14 = 4.4$ 2-week construction periods), resulting in 18 takes by Level B harassment (1 group $\times$ 4 Pacific white-sided dolphin $\times$ construction 4.4 periods = 17.6 takes by Level B harassment). No takes by Level A harassment are requested or proposed for authorization.

Harbor Porpoise

CBS requested take by Level B harassment of 16 harbor porpoise, based on an estimated 1 harbor porpoise occurring every 4 construction days for 62 construction days. However, harbor porpoise were rarely observed from Whale Park in groups of five during weekly surveys conducted from September to May between 1995 and 2000. As such, NMFS finds it more appropriate to propose to authorize 1 group of 5 harbor porpoise every 14 construction days ($62/14$ construction days = 4.4 2-week construction week periods), resulting in 22 takes by Level B harassment (1 group $\times$ 5 harbor porpoises $\times$ 4.4 construction periods = 22 takes by Level B harassment).

During impact pile driving of 36-in steel piles, estimated across 30 construction days, the expected Level A harassment zone is larger than the planned shutdown zone (see Figure 1 of the Marine Mammal Mitigation and Monitoring Plan). As such, it is possible that harbor porpoise may enter the Level A harassment zone and stay long enough to incur PTS before exiting. For 36-in support piles, the ratio of the Level A harassment area (km^2) that exceeds the shutdown zone to the maximum predicted Level B harassment area (km^2) is 0.38. This activity is estimated to take place on 20 construction days ($20 \text{ construction days}/14 \text{ days} = 1.43$ 2-week construction periods). For 36-in batter piles, the ratio of the portion of the Level A harassment area that exceeds the shutdown zone area (km^2) to the maximum predicted Level B harassment

area is 0.48. This activity is estimated to take place on 10 construction days (10 construction days/14 days = 0.71 2-week construction periods). As such, five takes by Level A harassment are estimated $[(0.38 \times 1 \text{ group} \times 5 \text{ harbor porpoise} \times 1.43 \text{ 2-week construction periods}) + (0.48 \times 1 \text{ group} \times 5 \text{ harbor porpoises} \times 0.71 \text{ 2-week construction periods}) = 4.4 \text{ takes by Level A harassment}]$.

Any individuals exposed to the higher levels associated with the potential for PTS closer to the source might also be behaviorally disturbed; however, for the purposes of quantifying take we do not count those exposures of one individual as a take by both Level A harassment and Level B harassment. Therefore, NMFS proposes to authorize 5 takes by Level A harassment and 17 takes by Level B harassment for harbor porpoise, for a total of 22 takes.

Steller Sea Lion

CBS requested take by Level B harassment of 496 Steller sea lions, based on an estimated 8 Steller sea lions occurring every 1 construction day for 62 construction days. NMFS concurs with this take estimate, acknowledging that four groups of two Steller sea lions occurring each construction day is reasonable based on previous monitoring data (2 groups $\times$ 4 Steller sea lion $\times$ 62 construction days = 496 takes by Level B harassment of Steller sea lion).

During impact pile driving of 36-in steel piles, estimated across 30 construction days, the expected Level A harassment zone is larger than the proposed shutdown zone. As such, it is possible that Steller sea lion may enter the Level A harassment zone and stay long enough to incur PTS before exiting. For 36-in support piles, the ratio of the Level A harassment area that exceeds the planned shutdown zone (km^2) to the maximum predicted Level B harassment area (km^2) for is 0.001. This activity is estimated to take place on 20 construction days. For 36-in batter piles, the ratio of the Level A harassment area (km^2) to the maximum predicted Level B harassment area is 0.002. This activity is estimated to take place on 10 construction days. As such, one take by Level A harassment was estimated $[(0.001 \times 20 \text{ construction days} \times 2 \text{ groups} \times 4 \text{ Steller sea lion} \times 20 \text{ construction days}) + (0.002 \times 10 \text{ construction days} \times 2 \text{ groups} \times 4 \text{ Steller sea lion} \times 10 \text{ construction days}) = 0.32 \text{ takes by Level A harassment}]$.

However, the 0.32 takes by Level A harassment estimated using the method described above does not likely reflect the occurrence of Steller sea lion in the

project area. Based on monitoring data collected during geotechnical survey conducted to inform this IHA application, Steller sea lions are expected to disproportionally occur within close proximity to the project site. Approximately 37 percent of Steller sea lions documented during that survey were observed between 60 m and 130 m, which corresponds to the Level A zones during impact pile driving of 36-in piles. These scenarios may occur on up to 30 construction days. Therefore 89 additional takes by Level A harassment are proposed for authorization (2 groups of 4 Steller sea lion $\times$ 30 construction days $\times$ 0.37 = 89 takes by Level A harassment).

Any individuals exposed to the higher levels associated with the potential for PTS closer to the source might also be behaviorally disturbed, however, for the purposes of quantifying take we do not count those exposures of one individual as a take by both Level A and Level B harassment. Therefore takes by Level B harassment calculated as described above are further modified to deduct the proposed amount of take by Level A harassment. Therefore, NMFS proposes to authorize 89 takes by Level A harassment and 407 takes by Level B harassment for Steller sea lion, for a total of 496 takes.

California Sea Lion

CBS requested take by Level B harassment of five California sea lions, based on an estimated one California sea lion occurring every month that construction is planned (October to March = 5 months) to account for the unlikely but small possibility that California sea lion could occur in the project area. However, NMFS finds it more appropriate to estimate take by Level B harassment according to proposed duration of in-water work (62 construction days/30 days in 1 month = 2.06 construction months). As such, NMFS proposes to authorize take by Level B harassment of three California sea lion (1 group $\times$ 1 California sea lion $\times$ 2.06 construction months = 2.06 takes by Level B harassment of California sea lion). No takes by Level A harassment are requested or proposed for authorization.

Northern Fur Seal

CBS requested take by Level B harassment of five northern fur seals, based on an estimated one northern fur seal occurring every month that construction is planned (October—March = 5 months) to account for the unlikely but small possibility that northern fur seals could occur in the project area. However, NMFS finds it

more appropriate to estimate take by Level B harassment according to proposed duration of in-water work (62 construction days/30 days in 1 month = 2.06 months). As such, NMFS proposes to authorize take by Level B harassment of three northern fur seals (1 group $\times$ 1 northern fur seal $\times$ 2.06 construction months = 2.06 takes by Level B harassment of northern fur seal). No takes by Level A harassment are requested or proposed for authorization.

Harbor Seal

CBS requested take by Level B harassment of 124 harbor seals, based on an estimated 2 harbor seals occurring every 2 construction days for 62 construction days. However, because harbor seals are frequently documented in the project area, NMFS finds it more appropriate to propose to authorize 186 takes by Level B harassment of harbor seal, based on the maximum groups size of 3 documented at the project site in 2017 (1 group $\times$ 3 harbor seal $\times$ 62 construction days = 186 takes by Level B harassment).

During impact pile driving of 36-in steel piles, estimated across 30 construction days, the expected Level A harassment zone is larger than the planned shutdown zone. As such, it is possible that harbor seal may enter the Level A harassment zone and stay long enough to incur PTS before exiting. For 36-in support piles, the ratio of the Level A harassment area (km^2) that exceeds the planned shutdown zone to the Level B harassment area (km^2) is 0.16. This activity is estimated to take place on 20 construction days. For 36-in batter piles, the ratio of the Level A harassment area that exceeds the shutdown zone area (km^2) to the maximum predicted Level B harassment area is 0.23 (km^2). This activity is estimated to take place on 10 construction days. As such, 34 takes by Level A harassment are estimated $[(0.16 \times 20 \text{ construction days} \times 1 \text{ group} \times 3 \text{ harbor seals} \times 20 \text{ construction days}) + (0.23 \times 10 \text{ construction days} \times 1 \text{ group} \times 3 \text{ harbor seals}) = 33.2 \text{ takes by Level A harassment}]$.

Any individuals exposed to the higher levels associated with the potential for PTS closer to the source might also be behaviorally disturbed, however, for the purposes of quantifying take we do not count those exposures of one individual as a take by both Level A harassment take and Level B harassment. Therefore takes by Level B harassment calculated as described above are further modified to deduct the proposed amount of take by Level A harassment. Therefore, NMFS proposes to authorize 34 takes by Level A harassment and 152 takes by

Level B harassment for harbor seal, for a total of 186 takes.

The total proposed take authorization for all species is summarized in table 8

below. Take by Level A harassment is proposed for a total of 3 incidents for gray whale, 11 incidents for humpback

whale, 5 incidents for harbor porpoise, 6 instances for Steller sea lion, and 34 incidents for harbor seal.

TABLE 8—PROPOSED TAKE BY STOCK AND HARASSMENT TYPE AND AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Proposed authorized take ¹		Proposed take as a percentage of stock abundance
		Level B harassment	Level A harassment	
Gray Whale	Eastern N Pacific	11	3	<1
	Mexico—North Pacific	5	1	<1
Humpback Whale ²	Hawai'i	231	11	<1
Killer Whale ³	ENP Alaska Resident	44	0	2.3
	ENP Northern Resident	7	0	14.2
	ENP Gulf of Alaska, Aleutian Islands, and Bering Sea	14	0	2.4
	West Coast Transient	8	0	2.3
Pacific white-sided dolphin	North Pacific	18	0	<1
Harbor Porpoise	Yakutat/Southeast Alaska Offshore Waters ..	17	5	(⁴)
Steller sea lion ⁵	Western DPS	5	1	<1
	Eastern DPS	402	88	1.3
California sea lion	United States	3	0	<1
Northern fur seal	Eastern Pacific	3	0	<1
Harbor Seal	Sitka/Chatham Strait	152	34	1.4

¹ When allocating take across stocks, take estimates are rounded up to the nearest whole number.

² 2 percent of take by Level A and Level B harassment of humpback whales are allocated to the Mexico DPS according to NMFS, 2021

³ Take by level B harassment of killer whale is allocated across stocks according to the proportion of the stock compared to total number of animals in all four stocks that could occur in the project area: Alaska Residents, 60.7 percent; Northern Residents, 9.6 percent; Gulf of Alaska, Aleutian Islands, and Bering Sea: 18.6 percent; West Coast Transient, 11.1 percent.

⁴ A reliable abundance estimate for this stock is currently unavailable.

⁵ 1.2 percent take by Level A and Level B harassment of Steller sea lions are allocated to the Western DPS according to Hastings *et al.* (2020).

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine

mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and,

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Mitigation for Marine Mammals and Their Habitat

Shutdown Zones—For all pile driving activities, CBS proposes to implement shutdowns within designated zones. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones vary based on the activity type and marine mammal hearing group (table 9). In most cases, the shutdown zones are based on the estimated Level A harassment isopleth distances for each hearing

group. However, in cases where it would be challenging to detect marine mammals at the Level A harassment isopleth (*e.g.*, for phocids, high frequency cetaceans, and low frequency cetaceans during impact pile driving) and/or frequent shutdowns would create practicability concerns (*e.g.*, Steller sea lions during impact pile driving), smaller shutdown zones have been proposed (table 9).

Construction supervisors and crews, Protected Species Observers (PSOs), and relevant CBS staff must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction. If an activity is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone indicated in table 9, or 15 minutes have passed without re-detection of the animal.

Finally, construction activities must be halted upon observation of a species for which incidental take is not

authorized or a species for which incidental take has been authorized but the authorized number of takes has been met entering or within any harassment zone. If a marine mammal species not covered under this IHA enters a

harassment zone, all in-water activities will cease until the animal leaves the zone or has not been observed for at least 15 minutes, and NMFS would be notified about species and precautions taken. Pile driving will proceed if the

unauthorized species is observed leaving the harassment zone or if 15 minutes have passed since the last observation.

TABLE 9—PROPOSED SHUTDOWN ZONES

Pile size/type	Method	Shutdown zones (m)					
		LF	MF	HF	PW	OW	
						Steller sea lion	Other OW
Haulout Pier Support Pile							
36-in Steel Pipe Pile	Vibratory Installation	30	10	40	20	10	10
	Impact Installation	2,000	90	300	130	60	100
Haulout Pier Batter Pile							
36-in Steel Pipe Pile	Vibratory Installation	40	10	60	30	10	10
	Impact Installation	2,000	120	300	130	60	130
Haulout Pier Fender Pile							
24-in Steel Pipe Pile	Vibratory Installation	20	10	30	10	10	10
Template Pile							
24-in Steel Pipe Pile	Vibratory Installation and removal	20	10	30	20	10	10

Protected Species Observers (PSOs)—The number and placement of PSOs during all construction activities (described in the Proposed Monitoring and Reporting section) would ensure that the entire shutdown zone is visible during impact pile driving. In such cases, PSOs would monitor the Level A harassment zone and corresponding shutdown zone to the greatest extent practicable. CBS would employ at least three PSOs for all pile driving activities.

Monitoring for Level A and Level B Harassment—PSOs would monitor the shutdown zones and beyond to the extent that PSOs can see. Monitoring beyond the shutdown zones enables observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone. If a marine mammal enters either harassment zone, PSOs will document the marine mammal's presence and behavior.

Pre-and Post-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would observe the shutdown zones and as much as the harassment zones as possible for a period of 30 minutes. Pre-start clearance monitoring must be conducted during

periods of visibility sufficient for the lead PSO to determine that the shutdown zones are clear of marine mammals. If the shutdown zone is obscured by fog or poor lighting conditions, in-water construction activity will not be initiated until the entire shutdown zone is visible. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals. If a marine mammal is observed entering or within shutdown zones, pile driving activity must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal. If a marine mammal for which take by Level B harassment is authorized is present in the Level B harassment zone, activities may begin.

Soft-Start—The use of soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of three

strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure would be conducted a total of three times before impact pile driving begins. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start is not required during vibratory pile driving activities.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance. Note that the applicant opted to forgo the use of a bubble curtain as a mitigation measure as its use would decrease production rates due to the need to reposition the curtain around piles and vessel traffic, the need to maintain and operate the compressor, and delays associated with mechanical malfunctions.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking.

The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring—Marine mammal monitoring during pile driving activities must be conducted by NMFS-approved PSOs in a manner consistent with the following:

- PSOs must be independent of the activity contractor (for example, employed by a subcontractor), and have no other assigned tasks during monitoring periods;
- At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;

- Other PSOs may substitute other relevant experience, education (degree in biological science or related field) or training for experience performing the duties of a PSO during construction activities pursuant to a NMFS-issued incidental take authorization;

- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator will be designated. The lead observer will be required to have prior experience working as a marine mammal observer during construction activity pursuant to a NMFS-issued incidental take authorization; and,

- PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

PSOs should also have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including, but not limited to, the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and,
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Visual monitoring would be conducted by a minimum of three trained PSOs positioned at suitable vantage points, such as the project site, Sawmill Creek Road and Medveje Hatchery (see figure 1 in the Marine Mammal Mitigation and Monitoring Plan). During vibratory pile driving, at least one PSO would have an unobstructed view of all water within the shutdown zone. During impact pile driving, a second PSO would be placed at Sawmill Creek Road to ensure the largest shutdown zone extending into Eastern Channel is observable and a third PSO would be placed at Medveje Hatchery to ensure as much of the shutdown zone in Silver Bay is observable as possible. All PSOs would be stationed on elevated platforms to aid in monitoring marine mammals.

Monitoring would be conducted 30 minutes before, during, and 30 minutes

after all in water construction activities. In addition, PSOs will record all incidents of marine mammal occurrence, regardless of distance from activity, and will document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Reporting

CBS would submit a draft marine mammal monitoring report to NMFS within 90 days after the completion of pile driving activities, or 60 days prior to a requested date of issuance of any future IHAs for the project, or other projects at the same location, whichever comes first. The marine mammal monitoring report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report will include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including: (1) the number and type of piles that were driven and the method (*e.g.*, impact or vibratory); and, (2) total duration of driving time for each pile (vibratory driving) and number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information: (1) name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; (2) time of sighting; (3) identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; (4) distance and location of each observed marine mammal relative to the pile being driven for each sighting; (5) estimated number of animals (min/max/best estimate); (6) estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*); (7) animal's closest point of approach and estimated time spent within the harassment zone; and,

(8) description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

- Number of marine mammals detected within the harassment zones, by species; and,
- Detailed information about implementation of any mitigation (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of receipt of the draft report, the report shall be considered final. All PSO data would be submitted electronically in a format that can be queried such as a spreadsheet or database and would be submitted with the draft marine mammal report.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Holder must report the incident to the OPR, NMFS (PR.ITP.MonitoringReports@noaa.gov and itp.fleming@noaa.gov) and Alaska Regional Stranding network (877-925-7773) as soon as feasible. If the death or injury was clearly caused by the specified activity, the Holder must immediately cease the activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of this IHA. The Holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and,
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in table 2, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Pile driving and removal activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment and, for some species, Level A harassment from underwater sounds generated by pile driving and removal. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

No serious injury or mortality is expected, even in the absence of required mitigation measures, given the nature of the activities. Further, no take by Level A harassment is anticipated for gray whale, killer whale, Pacific white-sided dolphin, California sea lion, and Northern fur seal due to the application of planned mitigation measures, such as shutdown zones that encompass the Level A harassment zones for the species, the rarity of the species near the action area, and the small Level A harassment zones (for mid-frequency cetaceans only) (see Proposed Mitigation section).

Take by Level A harassment is proposed for authorization for four species (humpback whale, harbor porpoise, harbor seal, and Steller sea lion). Any take by Level A harassment is expected to arise from, at most, a small degree of PTS (*i.e.*, minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving such as the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS.

Further, the amount of take proposed for authorization by Level A harassment is very low for the marine mammal stocks and species. For five species, NMFS anticipates no take by Level A harassment over the duration of CBS's planned activities; NMFS expects no more than 11 takes by Level A harassment for humpback whale; 5 takes by Level A harassment for harbor porpoise; 34 takes by Level A harassment for harbor seal NMFS; and 89 takes by Level A harassment for Steller sea lion. If hearing impairment occurs, it is most likely that the affected animal would lose only a few dB in its hearing sensitivity. Due to the small degree anticipated, any PTS potential incurred would not be expected to affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

Additionally, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. However, since the hearing sensitivity of individuals that incur TTS is expected to recover completely within minutes to hours, it is unlikely that the brief hearing impairment would affect the individual's long-term ability to forage and communicate with conspecifics,

and would therefore not likely impact reproduction or survival of any individual marine mammal, let alone adversely affect rates of recruitment or survival of the species or stock.

Effects on individuals that are taken by Level B harassment in the form of behavioral disruption, on the basis of reports in the literature as well as monitoring from other similar activities, would likely be limited to reactions such as avoidance, increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (e.g., Thorson and Reyff, 2006). Most likely, individuals would simply move away from the sound source and temporarily avoid the area where pile driving is occurring. If sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activities are occurring. We expect that any avoidance of the project areas by marine mammals would be temporary in nature and that any marine mammals that avoid the project areas during construction would not be permanently displaced. Short-term avoidance of the project areas and energetic impacts of interrupted foraging or other important behaviors is unlikely to affect the reproduction or survival of individual marine mammals, and the effects of behavioral disturbance on individuals is not likely to accrue in a manner that would affect the rates of recruitment or survival of any affected stock.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause a low level of turbidity in the water column and some fish may leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected (with no known particular importance to marine mammals), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

While Steller sea lions are common in the project area, there are no essential primary constituent elements, such as haulouts or rookeries, present. The nearest haulout is well over 25 km away. Therefore, the project is not expected to have significant adverse effects on the critical habitat of Western DPS Steller sea lions. No areas of specific biological importance (e.g., ESA critical habitat, BIAs, or other areas) for

any other species are known to co-occur with the project area.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on each stock's ability to recover. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities would have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and would therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Level A harassment would be very small amounts of a low degree;
- Take by Level A harassment of only humpback whale, harbor porpoise, Steller sea lions and harbor seals;
- For all species, Silver Bay and East Channel are a very small and peripheral part of their range;
- Anticipated takes by Level B harassment are relatively low for all stocks. Level B harassment would be primarily in the form of behavioral disturbance, resulting in avoidance of the project areas around where impact or vibratory pile driving is occurring, with some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints of activities;
- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations;
- The ensnified areas are very small relative to the overall habitat ranges of all species and stocks, and would not adversely affect ESA-designated critical habitat for any species or any areas of known biological importance;
- The lack of anticipated significant or long-term negative effects to marine mammal habitat; and,
- CBS would implement mitigation measures including visual monitoring, soft-start, and shutdown zones to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level

A harassment is, at most, a small degree of PTS.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposed to authorize is below one third of the estimated stock abundance for all species. This is likely a conservative estimate because we assume all takes are of different individual animals, which likely would not be the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

The most recent abundance estimate for the Mexico-North Pacific stock of humpback whale is likely unreliable as it is more than 8 years old. The most relevant estimate of this stock's abundance in Southeast Alaska is 918 humpback whales (Wade, 2021), so the 4 proposed takes by Level B harassment and 1 proposed take by Level A harassment is small relative to the estimated abundance (<1 percent), even if each proposed take occurred to a new individual.

There is no abundance information available for the Yakutat/Southeast Alaska stock of harbor porpoise. However, the take numbers are sufficiently small (13 takes by Level B harassment and 9 takes by Level A harassment) that we can safely assume

that they are small relative to any reasonable assumption of likely population abundance for these stocks. For reference, current abundance estimates for harbor porpoise stocks in southeast Alaska include 1,619 (Northern Southeast Alaska Inland Waters) and 890 (Southern Southeast Alaska Inland Waters).

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an “unmitigable adverse impact” on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined “unmitigable adverse impact” in 50 CFR 216.103 as an impact resulting from the specified activity that: (1) is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and, (2) cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

For marine mammals, Alaska Natives have traditionally harvested harbor seals and Steller sea lions in Sitka, Alaska. During the most recent ADF&G subsistence harvest report (2013), about 11 percent of Sitka households used subsistence-caught marine mammals, however, this is the most recent data available and there has not been a survey since 2013 (ADF&G, 2023).

The proposed project is not likely to adversely impact the availability of any marine mammal species or stocks that are commonly used for subsistence purposes or impact subsistence harvest of marine mammals in the region because:

- There is no recent recorded subsistence harvest of marine mammals in the area;
- Construction activities are temporary and localized to the Gary Paxton Industrial Park, and industrial area;
- Construction will not take place during the herring spawning season

when subsistence species are more active;

- Mitigation measures will be implemented to minimize disturbance of marine mammals in the action area; and,

- The project will not result in significant changes to availability of subsistence resources.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from CBS’s proposed activities.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the Alaska Regional Office (AKRO).

NMFS is proposing to authorize take of western DPS of Steller sea lions and the Mexico DPS of humpback whales, which are listed under the ESA.

The Permits and Conservation Division has requested initiation of section 7 consultation with the AKRO for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to CBS for conducting Gary Paxton Industrial Park Vessel Haulout project in Sitka, Alaska between October 2024 and March 2025, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed

IHA for the proposed pile driving and removal activities. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned, or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: July 2, 2024.

Kimberly Damon-Randall,
Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 2024–15012 Filed 7–8–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XE096]

Council Coordination Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting; information regarding the agenda.

SUMMARY: The National Marine Fisheries Service, Office of Sustainable Fisheries, will host an interim session of the Council Coordination Committee (CCC), consisting of the Regional Fishery Management Council chairs, vice chairs, and executive directors, on July 24, 2024. The intent of this virtual meeting is to discuss draft updates to NMFS Procedure 04–114–02, the Ecosystem-Based Fisheries Management (EBFM) Road Map.

DATES: The meeting will begin at 3:30 p.m. Eastern Daylight Time (EDT) on Wednesday July 24, adjourning at 5:00 p.m. EDT.

ADDRESSES: The meeting will be held online via WebEx at <https://noaanmfs-meets.webex.com/noaanmfs-meets/j.php?MTID=md488252c97e93eb5cba28de943a2070c> [Meeting number: 2825 457 3083; Password: TsZGuMR!].

FOR FURTHER INFORMATION CONTACT: Morgan Corey by email at Morgan.Corey@noaa.gov or at (301) 427–8500.

SUPPLEMENTARY INFORMATION: In 2016, NMFS adopted its EBFM Policy and EBFM Road Map. Both the Policy and the Road Map are part of NMFS's Policy Directive System, which guides work within NMFS, but does not have the force and effect of law and do not bind the public. The EBFM Policy was updated in the Policy Directive System in February 2024, following a scheduled 2023 review. The more detailed EBFM Road Map was also scheduled for and subject to a review in 2023, and NMFS made the draft Road Map available for public review in May 2024.

During this interim CCC session, NMFS will brief the CCC on updates to the EBFM Policy and Road Map, and will discuss progress made to date on implementing these internal directives since 2016.

The 2007 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act established the CCC. The CCC consists of the chairs, vice chairs, and executive

directors of each of the eight Regional Fishery Management Councils.

Proposed Agenda

Wednesday, July 24, 2024—3:30 p.m.–5 p.m. EDT

1. Welcome (Mike Ruccio)
2. EBFM Policy and Road Map Overview & Discussion (Yvonne deReynier and Jason Link)
3. Public Comment
4. Close of Meeting (Mike Ruccio)

Special Accommodations

If you have particular access needs please contact Morgan Corey at Morgan.Corey@noaa.gov at least 7 business days prior to the meeting for accommodation.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2024.

Kelly Denit,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–15020 Filed 7–8–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XE086]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is holding a hybrid meeting of its Scientific and Statistical Committee (SSC) to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, July 30 and Wednesday, July 31, 2024, beginning at 9 a.m.

ADDRESSES: This meeting will be held at the Hilton Garden Inn, 100 High Street, Portsmouth, NH 03801; telephone: (603) 431–1499.

Webinar Registration information: https://nefmc-org.zoom.us/j/6tUjPceGsrz0uGNUPQ_3alPmYs5qFYQLf6uic.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:**Agenda**

The Scientific and Statistical Committee (SSC) will meet to review the information provided by the Council's Plan Development Teams, review stock assessment information where appropriate, and recommend the overfishing limits (OFL) and acceptable biological catches (ABC) for: Atlantic herring for fishing years (FY) 2025–2027. Four stocks of Atlantic cod for FY 2025–2027.* Georges Bank yellowtail flounder for FY 2025–2026. They will review a method developed by the Northeast Fisheries Science Center for apportioning the biomass of Georges Bank cod and haddock into the Eastern Georges Bank management area. Other business will be discussed as necessary. * *Review of some cod stocks may be postponed pending the timing of assessments being final.*

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2024.

Key Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–15001 Filed 7–8–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****[RTID 0648–XE087]****Endangered Species; File No. 27551**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that the Georgia Department of Natural Resources (GA DNR) has been issued a permit for the incidental take of shortnose (*Acipenser brevirostrum*) and Atlantic sturgeon (*A. oxyrinchus*) associated with the otherwise lawful commercial shad fishery in Georgia.

ADDRESSES: The permit and related documents are available on the NMFS Office of Protected Resources website at: <https://www.fisheries.noaa.gov/action/incidental-take-permit-georgia-department-natural-resources-0>.

FOR FURTHER INFORMATION CONTACT: Celeste Stout, phone: (301) 427–8436; email: Celeste.Stout@noaa.gov.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act (ESA) and Federal regulations prohibits the ‘taking’ of a species listed as endangered or threatened. The ESA defines “take” to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species when the takes are incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. The regulations for issuing incidental take permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following species are included in the conservation plan and permit application: Atlantic (*Acipenser oxyrinchus*) and shortnose (*A. brevirostrum*) sturgeon.

Background

On August 21, 2023, notice was published in the **Federal Register** (88 FR 56804) that a request for a permit for the incidental take of shortnose and Atlantic sturgeon associated with the otherwise lawful commercial shad fishery in Georgia had been submitted by GA DNR. No comments were received during the 30 day public

comment period. The requested permit has been issued under the authority of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 27551

The permit authorizes take of ESA-listed shortnose and Atlantic sturgeon that are caught incidental to the Georgia commercial shad fishery. GA DNR incidental capture will not exceed 60 shortnose sturgeon per year (no more than 180 in a 3-year period) and 40 Atlantic sturgeon per year (no more than 120 in a 3-year period) in the Altamaha River; 5 shortnose sturgeon per year (no more than 15 in a 3-year period) and 25 Atlantic sturgeon per year (no more than 75 in a 3-year period) in the Savannah River. No lethal takes were requested by GA DNR because no mortalities have been observed over the last 10 years. However, due to the risks posed by capture in set and drift gill nets in the GA shad fishery, 10 percent of sturgeon that are captured are expected to be injured and 2.3 percent of both shortnose and Atlantic sturgeon are expected to suffer mortality. Thus, from the above authorized take of shortnose sturgeon, no more than 17 of the interactions may result in injury and no more than 8 mortalities may occur over the duration of the permit. From the above authorized take of Atlantic sturgeon, no more than 17 of the interactions may result in injury and no more than 8 mortalities may occur over the duration of the permit.

Conservation Plan

Section 10 of the ESA specifies that no permit may be issued unless an applicant submits an adequate conservation plan. The conservation plan prepared by GA DNR describes measures designed to minimize and mitigate the impacts of any incidental take of ESA-listed shortnose sturgeon and Atlantic sturgeon. The State of Georgia has amended its commercial fishing regulations for the Georgia commercial shad fishery to minimize the incidental capture of ESA-listed shortnose sturgeon and the South Atlantic, Carolina, Chesapeake Bay, New York Bight, and Gulf of Maine Distinct Population Segments (DPS) of Atlantic sturgeon. The new regulations restrict fishing to the lower portions of the Savannah and Altamaha Rivers as follows: Waters of the Altamaha River system open to commercial shad fishing are the Ohoopee River upstream to the U.S. Hwy. 1 bridge and the Altamaha River downstream of the US Hwy. 1

bridge to the estuarine waters of the sound/beach boundary. Although they historically were open prior to 2011, all waters upstream of the U.S. Hwy. 1 bridge are closed to commercial shad fishing. These upstream waters include a significant portion of the preferred spawning area and habitat utilized by sturgeon, hence their closure and protection by the GADNR. Waters of the Savannah River system open to commercial shad fishing are the Savannah River downstream of the US Hwy. 301 bridge to the estuarine waters of the sound/beach boundary. The waters upstream of the US Hwy. 301 bridge are considered to include a significant portion of the preferred spawning area and habitat utilized by sturgeon, hence their closure and protection by the GADNR.

The Georgia shad fishery is open from January 1 to as late as April 30 each year, but would typically end March 31. In addition, GA DNR will implement measures described in the conservation plan that accompanies the permit to minimize, monitor, and mitigate the incidental take of ESA-listed sturgeon. The conservation plan includes continued implementation of Georgia’s amended commercial fishing regulations for the Georgia shad fishery, which are expected to minimize the bycatch of sturgeon by closing to shad fishing sections of the rivers that previously had the highest bycatch rates. These closures would also protect known and suspected sturgeon spawning sites. Georgia regulations require that sturgeon captured in shad nets be released unharmed into the waters from which they were taken. GA DNR is also expected to incidentally capture sturgeon during monitoring of the shad run. GA DNR will set drift nets in the Altamaha River during the fishing season to monitor the shad run and approximate the rate of incidentally captured shortnose and Atlantic sturgeon. This take is covered in the take authorizations provided above, no mortalities are anticipated. GA DNR will continue to educate commercial shad fisherman on identification of sturgeon species; proper handling techniques to minimize impacts to incidentally captured sturgeon, including the importance of frequently checking nets and immediately releasing sturgeon that were incidentally captured; the biological and legal importance of reporting incidental capture of sturgeon; and the importance of accurately recording sturgeon intercepts and returning the trip tickets in a timely manner. GA DNR has also committed to will insert passive integrated

transponder (PIT) tags and collect genetic samples from Atlantic sturgeon incidentally captured during monitoring in order to better determine what DPSs of Atlantic sturgeon are being captured in the fishery. The cost associated with the PIT tagging and the genetic sampling components of the conservation plan will be funded through the sources identified in the application.

National Environmental Policy Act

Issuing an ESA section 10(a)(1)(B) permit constitutes a Federal action requiring NMFS to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500–1508 and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Policy Act (1999). NMFS has determined that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement. This action falls within the B3 category—Issuance of, and amendments to, “low effect” Incidental Take Permits and their supporting “low effect” Habitat Conservation Plans under section 10(a)(1)(B) of the ESA. Additionally there are no extraordinary circumstances with the potential for significant environmental effects that would preclude the issuance of this permit type from being categorically excluded.

Dated: July 3, 2024.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–15018 Filed 7–8–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–HA–0076]

Proposed Collection; Comment Request

AGENCY: The Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Defense Health Agency (DHA) announces a proposed public information collection and seeks public

comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency’s estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 9, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Health Agency, 7700 Arlington Blvd., Falls Church, VA 22042, Amanda Grifka, 703–681–1771.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: DHA Equal Employment Opportunity (EEO) Complaints Program; DHA Form 28, DHA Form 30, EEO Contact Request E-Form; OMB Control Number 0720–EEOC.

Needs and Uses: Individuals have the right to file an EEO complaint with the DHA if they believe their employment, privileges, benefits, and/or working conditions have been adversely impacted due to their protected activity (race, color, etc.), resulting in disparate treatment or impact(s). Individuals

wishing to initiate the EEO Complaint Process must provide the necessary information to avoid processing delay(s). Information collected from individuals throughout the EEO Complaint Process and Reasonable Accommodation Process will be used (a) for processing of complaints of discrimination because of race, color, national origin, religion, sex, age, physical and/or mental disability, genetic information, or reprisal; (b) for processing of reasonable accommodation requests; (c) as a data source for complaint and reasonable accommodation information used for production of summary descriptive statistics and analytical studies of complaints and reasonable accommodation processing and resolution efforts; (d) to respond to general requests for information under the Freedom of Information Act; (e) to respond to requests from legitimate outside individuals or agencies (Congress, White House, Equal Employment Opportunity Commission (EEOC)) regarding the status of an EEO complaint, appeal, or reasonable accommodation request; or (f) to adjudicate an EEO complaint or appeal.

Affected Public: Individuals or households.

Annual Burden Hours: 425.8 hours.

Number of Respondents: 511.

Responses per Respondent: 1.

Annual Responses: 511.

Average Burden per Response: 50 minutes.

Frequency: As required.

Dated: July 2, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–15042 Filed 7–8–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0077]

Proposed Collection; Comment Request

AGENCY: National Defense University (NDU), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the NDU announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is

necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 9, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to National Defense University, 300 5th Ave. SW, Building 64, Room 314Z, Fort Lesley J. McNair, Washington, DC 20319, Monica Owczarzak (NDU Privacy Officer), 202–685–9464.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: NDU Security In-Process Form and National Background Investigation Services (NBIS) eApp Nomination Tier One Background Investigation Form; OMB Control Number 0704–0622.

Needs and Uses: This collection is used to properly verify an NDU employee's identity for the purpose of verifying their security clearance and need to know for their intended role at NDU. These collections also initiate minimum background investigations to meet (Homeland Security Presidential Directive 12 requirements for purposes of issuing a Common Access Card and NDU badge.

Affected Public: Individuals or households.

NDU Security In-Process Form

Annual Burden Hours: 27.08.
Number of Respondents: 125.
Responses per Respondent: 1.
Annual Responses: 125.
Average Burden per Response: 13 minutes.

NDU NBIS eApp Nomination Tier One Background Investigation Form

Annual Burden Hours: 16.67.
Number of Respondents: 100.
Responses per Respondent: 1.
Annual Responses: 100.

Total

Annual Burden Hours: 44.
Number of Respondents: 225.
Annual Responses: 225.
Average Burden per Response: 11.73 minutes.
Frequency: Annually.

Dated: July 2, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–15048 Filed 7–8–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0078]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the OUSD(P&R) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 9, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense

for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Deputy Director Health and Resilience, 4800 Mark Center Drive, Suite 06E22, Alexandria VA 22350–4000, Lisa Davis, 703–338–8926.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Workplace and Gender Relations Survey of DoD Civilians; OMB Control Number 0704–0614.

Needs and Uses: The legal requirements for the Workplace and Gender Relations Survey of DoD Civilians (WGRC) surveys can be found in the found in the National Defense Authorization Act for Fiscal Year 2015, section 1073, and 10 United States Code (U.S.C.), sections 481a, 136, and 2358. These legal requirements mandate that the WGRC solicit information on gender issues, including issues relating to sexual assault, sexual harassment, and gender discrimination in the DoD civilian employee workplace, as well as the climate in the Department for forming professional relationships between male and female employees. They also give the Department authority to conduct such surveys under the guidance of the USD(P&R).

The Office of People Analytics (OPA) administers both web-based and paper-and-pen surveys to support the personnel information needs of the USD(P&R). The WGRC survey expands a series of surveys that began in 1988 with military personnel to DoD civilian employees. OPA conducted Joint Service gender issues surveys of active-duty members in 1988, 1995, 2002, 2006, 2010, 2012, 2016, 2018, 2021, and 2023 and of Reserve component members in 2004, 2008, 2012, 2015, 2017, 2019, 2021, and 2023. This is the fourth iteration of WGRC surveys with DoD civilian employees, with the first iteration occurring in 2016, the second

administration in 2018, and the third administration in 2021. The WGRC survey is voluntary and legislatively required to be conducted every two years.

Information from the WGR surveys will be used by DoD policy offices and the Military Departments for program evaluation and, specifically, to assess and improve personnel policies, programs, practices, and training related to gender relations in the DoD civilian workplace. OPA will provide reports to DoD policy offices, each Military Department, and the Joint Chiefs of Staff.

Affected Public: Individuals or households.

Annual Burden Hours: 67,500.

Number of Respondents: 135,000.

Responses per Respondent: 1.

Annual Responses: 135,000.

Average Burden per Response: 30 minutes.

Frequency: Biennially.

Dated: July 2, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024-15041 Filed 7-8-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Innovation Board; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Under Secretary of Defense for Research and Engineering (USD(R&E)), Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Innovation Board (DIB) will take place.

DATES: Open to the public Wednesday, July 17th, 2024, from 10:30 a.m. to 12:00 p.m. Eastern Daylight Savings Time (EDST). Closed to the public Wednesday, July 17th, 2024, from 1:00 p.m. to 1:30 p.m. EDST.

ADDRESSES: The open and closed portions of the DIB public meeting on July 17th, 2024 will take place at the Pentagon in Washington, DC. The open portion will be accessible to the public virtually, via the Defense Visual Information Distribution Service (DVIDS).

FOR FURTHER INFORMATION CONTACT: Dr. Marina Theodotou, the DIB Designated

Federal Officer (DFO) at (571) 372-7344 (voice) or marina.theodotou.civ@mail.mil. Mailing address is Defense Innovation Board, 4800 Mark Center Drive, Suite 15D08, Alexandria, VA 22350-3600. Website: <https://innovation.defense.gov>. The most up-to-date changes to the meeting agenda and link to the virtual meeting can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the “Federal Advisory Committee Act” or “FACA”); 5 U.S.C. 552b and 41 Code of Federal Regulations (CFR) 102-3.140 and 102-3.150.

Due to circumstances beyond the control of the DFO and the DoD, the DIB was unable to provide public notification required by 41 CFR 102-3.150(a) concerning its July 17, 2024 meeting. Accordingly, the Advisory Committee Management Officer for the DoD, pursuant to 41 CFR 102-3.150(b), waives the 15-calendar day notification requirement.

Purpose of Meeting: The mission of the DIB is to provide the Secretary of Defense (SecDef), the Deputy Secretary of Defense (DepSecDef), and the USD(R&E) independent advice and strategic insights on emerging and disruptive technologies and their impact on national security, adoption of commercial sector innovation best practices, and ways to leverage the U.S. innovation ecosystem to align structures, processes, and human capital practices to accelerate and scale innovation adoption, foster a culture of innovation and an experimentation mindset, and enable the DoD to build enduring advantages. The DIB focuses on innovation-related issues and topics raised by the SecDef, the DepSecDef, or the USD(R&E). The objective of this DIB meeting is to hear perspectives from invited speakers, announce to the public the key recommendations resulting from the current studies, and vote on the advice and recommendations to give to the Department. Additionally, the DIB Chair and members will announce the two new studies being undertaken in the continued efforts to advise the SecDef, DepSecDef, and USD(R&E) on scaling innovation.

Agenda: The DIB’s open portion of the meeting will take place on July 17th, 2024, from 10:30 a.m. to 12:00 p.m. The DIB DFO, Dr. Marina Theodotou, will open the meeting and introduce the DIB Chair, Michael Bloomberg for his welcome and opening remarks. The DIB will present on current studies, discuss

relevant innovation topics through conversation and insights from guest speakers, and vote on current studies and recommendations. Guest speakers have been confirmed to provide insights on current studies, as follows:

“Aligning Incentives to Drive Faster Tech Adoption”—A study focusing on how to ensure the workforce is incentivized to innovate and drive faster tech adoption to provide capabilities to the warfighter.

Alexis Bonnell, Chief Information Officer and Director of Digital Capabilities Directorate, Air Force Research Laboratory.

MAJ Michael Kanaan, Military Deputy Chief Information Officer, DoD Chief Digital and Artificial Intelligence Office.

“Optimizing How We Innovate with Our Allies and Partners”—A study focusing on the challenges and opportunities of optimization of the innovation processes implemented with Allies and Partners to strengthen the national security of the United States.

James Appathurai, The North Atlantic Treaty Organization Acting Assistant Secretary General, Innovation, Hybrid, and Cyber.

CAPT Colin Kane, Chief of Staff, Military Deputy, Joint Rapid Acquisition Cell. Following these briefs and DIB discussions, the DIB will deliberate and vote to adopt the advice and recommendations to give to the Department in the form of a report, followed by the DFO who will reference public comments received ahead of this meeting. The Chair will offer closing remarks, and the DFO will adjourn the open session.

The DIB will continue in a closed meeting from 1:00 p.m. to 1:30 p.m. during which the DIB members will discuss topics around unmanned systems both for attack and counterattack; matters relating to scaling innovative processes and procedures; issues relating to innovating with our Allies and Partners; and approaches to strengthen how the Department engages with Industry to drive faster tech adoption. The latest version of the agenda can be found on the DIB’s website at innovation.defense.gov.

Meeting Accessibility: Pursuant to section 1009(a)(1) of the FACA and 41 CFR 102.140 and 102-3.150, the meeting will be accessible to the public virtually on July 17th, 2024, from 10:30 a.m. to 12:00 p.m. Members of the public wishing to attend the open session virtually will be able to access the link via DVIDS and on the DIB website at innovation.defense.gov. In accordance with section 1009(d) of the FACA and 41 CFR 102-3.155, the DoD has determined that part of the DIB meeting will be closed to the public on July 17, 2024, from 1:00 p.m. to 1:30 p.m. Specifically, the USD(R&E), as the DIB Sponsor, in consultation with the DoD Office of General Counsel, has determined in writing that this portion of the meeting will be closed to the public because the DIB will consider matters covered by 5 U.S.C. 552b(c)(1).

The determination is based on the classified nature of discussions related to national security. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meeting. To permit this portion of the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DIB's findings and recommendations to the SecDef and USD(R&E).

Written Statements: Pursuant to 41 CFR 102–3.105(l) and 102–3.140(a)(3) and section 1009(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the DIB in response to the stated agenda of the meeting or regarding the DIB's mission in general. Written comments or statements should be submitted to Dr. Marina Theodotou, the DFO, via email to osd.pentagon.ousd-r-e.mbx.dib2@mail.mil. Comments or statements must include the author's name, title or affiliation, address, and daytime phone number. The DFO must receive written comments or statements being submitted in response to the agenda set forth in this notice by 12:00 p.m. on Friday, July 12th, 2024, to be considered by the DIB. The DFO will review all timely submitted written comments or statements with the DIB Chair and ensure the comments are provided to all members before the meeting. Written comments or statements received after this date may not be provided to the DIB until its next scheduled meeting. Please note that all submitted comments and statements will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the DIB's website.

Dated: July 3, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–15049 Filed 7–8–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–HA–0075]

Proposed Collection; Comment Request

AGENCY: The Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Defense Health Agency (DHA) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 9, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Health Agency, 7700 Arlington Blvd., Falls Church, VA 22042, Amanda Grifka, 703–681–1771.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Joint Outpatient Experience Surveys (JOES); OMB Control Number 0720–JOES.

Needs and Uses: The core objective of the JOES surveys is to systematically assess Military Health System (MHS)

beneficiaries' perceptions of their outpatient care quality when received directly at Military Treatment Facilities and through civilian network providers reimbursed by the MHS. Data insights guide efforts to optimize care delivery across the MHS. The JOES survey suite leverages industry best practices to regularly measure patient satisfaction across the facets of outpatient care. Data-driven insights from this comprehensive assessment inform systematic quality improvement efforts for healthcare delivery optimization across the MHS. JOES instruments include: JOES, JOES–CAHPS, JOES–Dental, JOES–Ambulatory, JOES Walk-in Contraceptive Clinic, and JOES–Emergency Department. The JOES–CAHPS surveys adhere to industry protocols outlined by the Clinician & Group Consumer Assessment of Healthcare Providers and Systems (CG–CAHPS) for measuring patient satisfaction.

Affected Public: Individuals or households.

Annual Burden Hours: 25,833.

Number of Respondents: 310,000.

Responses per Respondent: 1.

Annual Responses: 310,000.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

Dated: July 2, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–15043 Filed 7–8–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting Notice—Military Justice Review Panel

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: The DoD is publishing this notice to announce that the following meeting of the Military Justice Review Panel (MJRP) will take place.

DATES: July 16–18, 2024.

ADDRESSES: This meeting will be held in the National Capital Region.

FOR FURTHER INFORMATION CONTACT: Mr. L. Peter Yob, 703–693–3857 (Voice), louis.p.yob.civ@mail.mil (Email). Mailing address is MJRP, One Liberty Center, 875 N Randolph Street, Suite 150, Arlington, Virginia 22203.

Information about the Military Justice Review Panel can be found on the website: <https://mjrp.osd.mil>.

SUPPLEMENTARY INFORMATION: Pursuant to 5521 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017, as amended by 531(k) of the FY 2018 NDAA, the Secretary of Defense established this panel to conduct independent periodic reviews and assessments of the operation of the Uniform Code of Military Justice (UCMJ), 10 U.S.C. 946, Article 146 (effective January 1, 2019).

Purpose of the Meeting: Pursuant to UCMJ Article 146, the MJRP shall conduct independent periodic reviews and assessments of the operation of the UCMJ. This will be the eleventh meeting held by the MJRP during which the members will work and deliberate on their comprehensive review which will be submitted to Congress at the end of this calendar year. At this meeting the MJRP will conduct closed sessions for MJRP members only.

Dated: July 3, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 2024-15052 Filed 7-8-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare a Draft Feasibility Report and Environmental Impact Statement for the Collier County Coastal Storm Risk Management Project, Collier County, Florida

AGENCY: U.S. Army Corps of Engineers, Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the U.S. Army Corps of Engineers (USACE) plans to prepare a draft Integrated Feasibility Study and Environmental Impact Statement (IFR/EIS) for the Collier County Coastal Storm Risk Management Study. This study will investigate the feasibility of managing coastal storm risks to nearshore areas of Collier County, Florida, from hurricanes and other storms with their associated wind, storm surge, and coastal flooding. This notice announces USACE's intent to determine the scope of the issues to be addressed and identify the significant issues related to a proposed action.

DATES: Scoping comments may be submitted until August 8, 2024.

ADDRESSES: The public is invited to submit National Environmental Policy Act (NEPA) scoping comments to Mrs.

Kathy Hanes, Department of the Army, USACE Norfolk District at Fort Norfolk, 803 Front St., Norfolk, VA 23510 or via email: Collier-csrmm@usace.army.mil. The project title, USACE-CW Planning-NAD/SAD-NAO-476674, and the commenter's contact information should be included with submitted comments.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Hanes, (757) 201-7218.

SUPPLEMENTARY INFORMATION: USACE is issuing this notice pursuant to 42 U.S.C. 4321 *et seq.*, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500-1508) and 54 U.S.C. 300101 *et seq.*, as implemented by Advisory Council on Historic Preservation regulations (36 CFR part 800). The study authority is provided in Section 4033 of the Water Resources Development Act of 2007 (Pub. L. 110-114), which authorizes a study to determine the feasibility of carrying out a project for hurricane and storm risk management and flood risk management in the vicinity of Vanderbilt, Park Shore, and Naples beaches, Collier County, Florida. The greater Study Area includes the nearshore, shoreline, back bays, connecting waters, and inland areas within the jurisdictional boundary of Collier County, Florida. The Study Area also includes any material borrow areas located within Federal waters of the Outer Continental Shelf (OCS) not within Collier County. The focused Study Area is separated into four different Planning Areas to help streamline plan formulation and numeric modeling exercises. The four separable Planning Areas (PAs) are (1) North County Beaches, (2) Naples, (3) Goodland, and (4) Marco Island. Additionally, and not limited to only within these PAs, is analysis and inclusion of risk management measures for Critical Infrastructure.

The study will investigate the feasibility of addressing storm and flood risks to vulnerable populations, property, infrastructure, and ecosystems along coastlines in Collier County, and develop and evaluate various alternatives aimed at managing those risks and increasing coastal resiliency against storm surge.

Several alternatives are currently being considered, including a no action alternative and various combinations of nonstructural measures and nature-based solutions for managing risks and damages caused by coastal storms in the Study Area in Collier County, Florida. Measures being considered include nature-based solutions such as beach nourishment berms and vegetated dunes, (sometimes considered "soft"

structural measures), mangrove restoration, and living shorelines; and nonstructural measures such as elevations of residences, dry and wet flood-proofing of buildings and critical infrastructure, and early warning systems.

Effects to be considered include but are not limited to the following: temporary and permanent social effects on disadvantaged or underserved communities due to nonstructural measures; potential primary or secondary effects on or near nearshore hardbottom resources threatened/endangered species, Essential Fish Habitat, and other benthic and aquatic resources, water quality, hydraulics and hydrology; temporary and or permanent effects on recreational use; effects on cultural resources; air quality and greenhouse gas emissions, and other relevant social and environmental effects.

USACE is the lead Federal agency and Collier County is the non-Federal sponsor for the study effort. The Cities of Naples and Marco Island were also invited to participate in regular study coordination with Collier County as key stakeholders. Cooperating agencies include the Environmental Protection Agency (EPA), the Bureau of Ocean Energy Management (BOEM), and the National Oceanic and Atmospheric Administration (NOAA). Participating agencies include the U.S. Fish and Wildlife Service (USFWS), Advisory Council on Historic Properties (ACHP), Florida Department of Environmental Protection (FDEP), the Florida Department of State Division of Historic Resources (DHR), Florida Fish and Wildlife Conservation Commission (FWC), Florida Division of Emergency Management (FDEM), Florida Department of Transportation (FDOT), the Seminole Tribe of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians in Florida, and the Thlopthlocco Tribal Town.

USACE anticipates that the following permits will be required: water quality certification pursuant to section 401 of the Clean Water Act, a Federal consistency determination pursuant to the Coastal Zone Management Act (CZMA), and leases from BOEM for use of offshore borrow areas. Coordination with environmental agencies will be conducted under the Endangered Species Act, the Magnuson-Stevens Fishery Conservation Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, and other Federal and State laws and regulations.

Public NEPA scoping meetings were held on the following dates: 18 April 2023 via Zoom; in person on 26 April

2023; multiple in-person public meetings on 21–22 June 2023; and in-person community meetings on 16–17 January 2024. Virtual monthly public information meetings have been held since July 2023. Federal, State, and local agencies, Indian tribes, and the public are invited to provide scoping comments on alternatives and effects, including any relevant information, studies, or analyses. Scoping comments will be accepted until *August 8, 2024*. All comments received during the scoping period are being used to identify additional measures and alternatives, significant resources, and impacts that should be considered in the EIS. Additional comments received outside the scoping period will be considered prior to the Draft EIS public review period, to the extent possible. For comments that cannot be addressed prior to the public review period, the comments will be included with the public review period comments on the draft EIS and addressed at that time.

Availability of Draft EIS: USACE estimates that the Draft IFR/EIS will be available for public review and comment in November 2024. At that time, USACE will provide a 60-day public review period for individuals and agencies to review and comment. USACE will notify all interested agencies, organizations, and individuals of the availability of the draft document at that time. A Final IFR/EIS is anticipated in late 2025.

Daniel H. Hibner,

Brigadier General, U.S. Army, Commanding.

[FR Doc. 2024–14985 Filed 7–8–24; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technical Assistance on State Data Collection—National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Part B Data

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2024 for Technical Assistance on State Data Collection—National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data.

DATES:

Applications Available: July 9, 2024.

Deadline for Transmittal of

Applications: August 8, 2024.

Pre-Application Webinar Information:

No later than July 15, 2024, the Office of Special Education and Rehabilitative Services will post details on pre-recorded informational webinars designed to provide technical assistance (TA) to interested applicants. Links to the webinars may be found at <https://www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html>.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.

FOR FURTHER INFORMATION CONTACT: Richelle Davis, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A10, Washington, DC 20202. Telephone: 202–245–6391. Email: Richelle.Davis@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet the Individuals with Disabilities Education Act (IDEA) data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary authority to reserve not more than one-half of one percent of the amounts appropriated under Part B for each fiscal year to provide TA activities, where needed, to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is \$25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires

the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. In addition, the Secretary may use funds reserved under section 611(c) of IDEA to “administer and carry out other services and activities to improve data collection, coordination, quality, and use under Parts B and C of the IDEA.” Further Consolidated Appropriations Act, 2024, Public Law 118–47, Division D, Title III, 136 Stat. 138, 460 (2024).

The Data Center will provide TA to help States to (1) effectively and efficiently respond to IDEA-related data submission requirements; (2) improve the analyses of IDEA data to the extent these analyses respond to critical policy questions that will facilitate program improvement and compliance accountability; and (3) comply with applicable privacy requirements, including the privacy and confidentiality requirements under IDEA and the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and its regulations at 34 CFR part 99.¹

Assistance Listing Number (ALN): 84.373Y.

OMB Control Number: 1820–0028.

Priority: This competition includes one absolute priority. This priority is from the notice of final priority and requirements (NFP) for this program published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data.

Priority:

The purpose of this priority is to fund a cooperative agreement to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data (Data Center).

The Data Center will provide TA to help States better meet current and

¹ The Center must review the need for additional resources (with input from the Department) and disseminate existing resources developed by the Department, such as: (1) *IDEA/FERPA Crosswalk (Surprenant & Miller, August 24, 2022)*; and (2) Data sharing agreement template (at <https://dasycenter.org/us-dept-ed-shares-idea-data-sharing-mou-template/>).

future IDEA Part B data collection and reporting requirements, improve data quality, and analyze and use section 616, section 618, and other IDEA data (e.g., State Supplemental Survey-IDEA) to identify and address programmatic strengths and areas for improvement. This Data Center will focus on providing TA on collecting, reporting, analyzing, and using Part B data on children with disabilities ages 3 through 21 required under sections 616 and 618 of IDEA. However, the Data Center will not provide TA on Part B data required under section 616 of IDEA for Indicators B7 (Preschool Outcomes) and B12 (Early Childhood Transition); TA on collecting, reporting, analyzing, and using Part B data associated with children with disabilities ages 3 through 5 for these indicators will be provided by the National IDEA Technical Assistance Center on Early Childhood Data Systems, ALN 84.373Z.

The Center must achieve, at a minimum, the following expected outcomes:

(a) Improved State data infrastructure by coordinating and promoting communication and effective data governance strategies among relevant State offices, including State educational agencies (SEAs), local educational agencies (LEAs), and schools to improve the quality of IDEA data required under sections 616 and 618 of IDEA;

(b) Increased capacity of States to submit accurate and timely data, to enhance current State validation procedures, and to prevent future errors in State-reported IDEA Part B data;

(c) Improved capacity of States to meet the data collection and reporting requirements under sections 616 and 618 of IDEA by addressing personnel training needs, developing effective tools (e.g., training modules) and resources (e.g., documentation of State data processes), and providing in-person and virtual opportunities for cross-State collaboration about data collection and

reporting requirements that States can use to train personnel in schools, programs, agencies, and districts;

(d) Improved capacity of SEAs, and LEAs in collaboration with SEAs, to collect, report, analyze, and use both SEA and LEA IDEA data to identify programmatic strengths and areas for improvement, address root causes of poor performance towards outcomes, and evaluate progress towards outcomes;

(e) Improved IDEA data validation by using results from data reviews conducted by the Department to work with States to generate tools that can be used by States to lead to improvements in the validity and reliability of data required by IDEA and enable States to communicate accurate data to local consumers (e.g., parents and families, school boards, the general public); and

(f) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B data.

In addition, to be considered for funding under this competition, applicants must meet the following requirements:

Applicants must—

(a) Demonstrate, in the narrative section of the application under “Significance,” how the proposed project will—

(1) Address the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and to increase their capacity to analyze and use section 616 and section 618 data as both a means of improving data quality and identifying programmatic strengths and areas for improvement. To meet this requirement the applicant must—

(i) Demonstrate knowledge of current educational issues and policy initiatives about IDEA Part B data collection and reporting requirements and knowledge of State and local data collection systems, as appropriate;

(ii) Present applicable national, State, and local data to demonstrate the

capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and use section 616 and section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement; and

(iii) Describe how SEAs and LEAs are currently meeting IDEA Part B data collection and reporting requirements and use section 616 and section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement.

(b) Demonstrate, in the narrative section of the application under “Quality of project services,” how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that products and services meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes, which depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: <https://osepideasthatwork.org/sites/default/files/2021-12/ConceptualFrameworkUpdated.pdf> and www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.

(4) Be based on current research and make use of evidence-based practices (EBPs).² To meet this requirement, the applicant must describe—

(i) The current research on the capacity of SEAs and LEAs to report and use data, specifically section 616 and section 618 data, as both a means of improving data quality and identifying strengths and areas for improvement; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify and develop the knowledge base on the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and SEA and LEA analysis and use of sections 616 and 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement;

(ii) Its proposed approach to universal, general TA,³ which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,⁴ which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,⁵ which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of SEA personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA and LEA levels;

(C) Its proposed approach to prioritizing TA recipients with a primary focus on meeting the needs of States with known ongoing data quality issues, as measured by the Office of Special Education Programs' (OSEP's) review of the quality of the IDEA sections 616 and 618 data;

(D) Its proposed plan for assisting SEAs (and LEAs, in conjunction with SEAs) to build or enhance training systems related to the IDEA Part B data collection and reporting requirements that include professional development based on adult learning principles and coaching;

(E) Its proposed plan for working with appropriate levels of the education system (e.g., SEAs, regional TA providers, LEAs, schools, and families) to ensure that there is communication between each level and that there are systems in place to support the capacity needs of SEAs and LEAs to meet Part B data collection and reporting requirements under sections 616 and 618 of the IDEA; and

more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

⁵ "Intensive, sustained TA" means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. "TA services" are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

(F) Its proposed plan for collaborating and coordinating with Department-funded TA investments (e.g., the Center funded under 84.373Z, the Center for IDEA Fiscal Reporting, the Center for the Integration of IDEA Data, the Data Center to Address Significant Disproportionality, and the Weiss Center) and Institute of Education Sciences/National Center for Education Statistics research and development investments, where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of this priority; and

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under "Quality of the project evaluation," include an evaluation plan for the project developed in consultation with and implemented by a third-party⁶ evaluator. The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these application and administrative requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

⁶ A "third-party" evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, or have any financial interest in the outcome of the evaluation.

² For purposes of these requirements, "evidence-based practices" (EBPs) means, at a minimum, demonstrating a rationale (as defined in 34 CFR 77.1) based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

³ "Universal, general TA" means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

⁴ "Targeted, specialized TA" means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report and at the end of Year 2 for the review process; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under "Adequacy of resources and quality of project personnel," how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

(e) Demonstrate, in the narrative section of the application under "Quality of the management plan," how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated to the project and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, easily accessible, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements:

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, during each year of the project period; and

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Provide an assurance that it will maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate; and

(6) Budget at least 50 percent of the grant award for providing targeted and intensive TA to States.

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), 1418(d), 1442; Further Consolidated Appropriations Act, 2024, Public Law 118–47, Division D, Title III, 138 Stat. 460, 685 (2024).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The OMB Guidance for Federal Financial Assistance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The NFP. (e) The regulations for this program in 34 CFR part 300.

Note: The Department will implement the changes included in the OMB final rule, OMB Guidance for Federal Financial Assistance (<https://www.federalregister.gov/documents/2024/04/22/2024-07496/guidance-for-federal-financial-assistance>), formerly called, Office of Management and Budget Guidance for Grants and Agreements, which amends 2 CFR part 200, on October 1, 2024. Grant applicants who anticipate a performance period start date on or after October 1, 2024, should follow the provisions stated in the updated 2 CFR part 200, when preparing an application. For more information about these updated regulations please visit: <https://www2.ed.gov/policy/fund/guid/uniform-guidance/index.html>. The Department will continue to provide more resources on our web page as they become available.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: \$6,250,000 in year one; \$6,500,000 in years two through five.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2025 from the list of unfunded applications from this competition.

Maximum Award: We will not make an award exceeding \$6,250,000 for a single budget period of 12 months in year one and \$6,500,000 for a single budget period of 12 months in years two through five.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; State lead agencies under Part C of IDEA; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see <https://www2.ed.gov/about/offices/list/ocfo/intro.html>.

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200, subpart E of the OMB Guidance for Federal Financial Assistance.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs, nonprofit organizations suitable to carry out the activities proposed in the application, and public agencies. The grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantee, consistent with 34 CFR 75.708(b)(2).

4. Other General Requirements:

(a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. Application Submission

Instructions: Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at www.federalregister.gov/d/2022-26554, which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make an award by the end of FY 2024.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 70 pages and (2) use the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

- (a) *Significance (10 points).*
 - (1) The Secretary considers the significance of the proposed project.
 - (2) In determining the significance of the proposed project, the Secretary considers the following factors:
 - (i) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.
 - (ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.
 - (b) *Quality of project services (35 points).*
 - (1) The Secretary considers the quality of the services to be provided by the proposed project.
 - (2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.
 - (3) In addition, the Secretary considers the following factors:
 - (i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.
 - (ii) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.
 - (iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.
 - (iv) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.
 - (v) The extent to which the TA services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.
 - (vi) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.
 - (c) *Quality of the project evaluation (15 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(iv) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(d) *Adequacy of resources and quality of project personnel (20 points).*

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iv) The qualifications, including relevant training, experience, and independence, of the evaluator.

(v) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(vi) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(vii) The extent to which the budget is adequate to support the proposed project.

(viii) The extent to which the costs are reasonable in relation to the objectives,

design, and potential significance of the proposed project.

(e) *Quality of the management plan (20 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of

reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions, and under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus

all the other Federal funds you receive exceed \$10,000,000.

6. *In General:* In accordance with the OMB Guidance for Federal Financial Assistance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN), or we may send you an email containing a link to access an electronic version of your GAN. We also may notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately

identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

5. *Performance Measures:* For the purpose of Department reporting under 34 CFR 75.110, the Department has established a set of performance measures that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance on State Data Collection program. These measures are:

- *Program Performance Measure #1:* The percentage of TA and dissemination products and services deemed to be of high quality by an independent review panel of experts qualified or individuals with appropriate expertise to review the substantive content of the products and services.

- *Program Performance Measure #2:* The percentage of TA and dissemination products and services deemed by an independent review panel of qualified experts or members of the target audiences to be of high relevance to educational and early intervention policy or practice.

- *Program Performance Measure #3:* The percentage of TA and dissemination products and services deemed by an independent review panel of qualified experts or members of the target

audiences to be useful in improving educational or early intervention policy or practice.

- *Program Performance Measure #4:* The cost efficiency of the Technical Assistance on State Data Collection Program includes the percentage of milestones achieved in the current annual performance report period and the percentage of funds spent during the current fiscal year.

The measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

The Department will also closely monitor the extent to which the products and services provided by the Center meet the needs identified by stakeholders and may require the Center to report on such alignment in their annual and final performance reports.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal**

Register. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2024-15053 Filed 7-5-24; 11:15 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Applications for New Awards; State Personnel Development Grants

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2024 for the State Personnel Development Grants (SPDG) program.

DATES:

Applications Available: July 9, 2024.

Deadline for Transmittal of

Applications: August 23, 2024.

Pre-Application Webinar Information: No later than July 15, 2024, the Office of Special Education and Rehabilitative Services will post pre-recorded informational webinars designed to provide technical assistance (TA) to interested applicants. The webinars may be found at <https://www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html>.

Note: For new potential grantees unfamiliar with grantmaking at the Department, please consult our “Getting Started with Discretionary Grant Applications” web page at <https://www2.ed.gov/fund/grant/about/discretionary/index.html>.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at

www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.

FOR FURTHER INFORMATION CONTACT:

Jennifer Coffey, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A220, Washington, DC 20202. Telephone: (202) 987-0150. Email: jennifer.coffey@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the SPDG program is to assist State educational agencies (SEAs) in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services to improve results for children with disabilities.

Assistance Listing Number: 84.323A.

OMB Control Number: 1820-0028.

Background: “Raise the Bar: Lead the World” (RTB) is the Department’s call to action to transform prekindergarten through postsecondary learning and unite around what truly works by promoting academic excellence, boldly improving learning conditions, and preparing our Nation’s students for global competitiveness (www.ed.gov/raisethebar/). A well-prepared and supported and sustainable educator workforce available to educate and support all children and youth, including children and youth with disabilities, is essential to this call to action. This competition is designed to support the Department’s RTB goals. Specifically, the priorities for this competition are designed to support projects that—

- Mitigate the barriers to improved educational opportunities and outcomes and functional results for children with disabilities by increasing the number of well-qualified, fully certified special education teachers, including paraprofessionals;
- Increase collaborative and effective instruction and services for children with disabilities;
- Expand the ability of principals to serve as instructional leaders who create an equity-based, cooperative, and inclusive environment; and
- Provide pre-service and in-service personnel with the knowledge, attitudes, skills, and aspiration to engage effectively with families.

The SPDG program, as a pre-service and in-service professional development program, is uniquely positioned to support the Department’s RTB goals by helping to ensure that children with disabilities have access to well-qualified educators and by growing the number of teachers and administrators who can use data to develop and implement standards-based individualized education programs (IEPs) and provide effective instruction in inclusive environments. The priorities specified in this notice are designed to support pathways and professional development for personnel to improve outcomes for children with disabilities. For more on the Department’s work to eliminate educator shortages, see www.ed.gov/raisethebar/educators.

This competition also includes four competitive preference priorities. Applicants may address up to two. With respect to Competitive Preference Priority 1, we note that Competitive Preference Priority 1 encourages applications that provide pathways for becoming fully certified special education teachers that are affordable and provide for robust preservice classroom experience. By reducing the cost of earning a license and offering flexible scheduling, teacher residency, Grow Your Own (GYO), and registered teacher apprenticeships programs are designed to bring more people into the profession. These programs may open doors to the profession for those who may otherwise face barriers to entrance, including multilingual, racially, and ethnically diverse individuals, individuals who have disabilities, and paraprofessionals who may already have decades of classroom experience, but for numerous reasons, including cost, could not pursue a teaching degree or a high-quality pathway into the profession that includes significant clinical experience.

Research shows that high-quality residency models can expand the pool of well-prepared applicants entering the teaching profession, increase the diversity of the workforce and bring a wide range of experiences into the classroom to support students. A 2014 implementation study published by the Institute of Education Sciences shows that residents are more likely than nonresidents to report feeling prepared to enter the classroom and that after program completion, more than 90 percent of residents stayed in their school district for three years (Silva et al., 2014).

When aligned to high-quality, evidence-based practices for education preparation, such as those drafted by the Pathways Alliance (www.thepathwaysalliance.org/reports)

and approved by the Department of Labor, registered teacher apprenticeship programs have the potential to be an effective, high-quality “earn and learn” model that allow candidates to earn their teaching credential while earning a salary by combining coursework with structured, paid on-the-job learning experiences with a mentor teacher (Pathways Alliance, 2023). Registered teacher apprenticeship programs for K–12 teachers can be used to establish, scale, and build on existing high-quality pathways into teaching that emphasize classroom-based experience, such as teacher residencies and GYO.

GYO is an approach to developing a pipeline of educator candidates to meet specific workforce needs that seeks to eliminate any barriers that may prevent local candidates from entering or remaining in the field. GYO programs are distinguished from other pipelines by whom they target, focusing on recruitment of high school students, career changers, paraprofessionals, non-teaching-school faculty, and community members (Espinoza et al., 2018). Offering financial aid (e.g., loan forgiveness, grants, and scholarships) to candidates completing GYO programs, targeting communication to specific populations, and establishing systems for candidates to receive continuous coaching and mentoring from entrance into the GYO program through early service can all aid in the success of these programs (Carver-Thomas, 2018; Professional Educator Standards Board, 2018; Texas Comprehensive Center, 2018). GYO programs can help address shortages in high-need areas and subjects, such as in rural schools and in special education (Jessen et al., 2020); it can also result in improved recruitment and retention of teachers of color (Gist et al., 2019).

Priorities: This notice contains three absolute priorities and four competitive preference priorities. In accordance with 34 CFR 75.105(b)(1), Absolute Priority 1 is from the notice of final priorities and definitions (NFP) published in the **Federal Register** on August 2, 2012 (77 FR 45944) (2012 NFP); and Absolute Priority 3 and the four competitive preference priorities are from the NFP for this program published elsewhere in this issue of the **Federal Register** (2024 NFP). In accordance with 34 CFR 75.105(b)(2)(iv), Absolute Priority 2 is from sections 651 through 655 of the Individuals with Disabilities Education Act (IDEA), as amended by the Every Student Succeeds Act (ESSA).

Absolute Priorities: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition,

these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet Absolute Priorities 1, 2, and 3 (i.e., an applicant must address all three absolute priorities in their application).

These priorities are:

Absolute Priority 1: Effective and Efficient Delivery of Professional Development.

The Department establishes a priority to assist SEAs in reforming and improving their systems for personnel (as that term is defined in section 651(b) of IDEA) preparation and professional development of individuals providing early intervention, educational, and transition services in order to improve results for children with disabilities.

In order to meet this priority an applicant must demonstrate in the SPDG State Plan it submits as part of its application under section 653(a)(2) of IDEA that its proposed project will—

(1) Use evidence-based (as defined in this notice) professional development practices that will increase implementation of evidence-based practices and result in improved outcomes for children with disabilities;

(2) Provide ongoing assistance to personnel receiving SPDG-supported professional development that supports the implementation of evidence-based practices with fidelity (as defined in this notice); and

(3) Use technology to more efficiently and effectively provide ongoing professional development to personnel, including to personnel in rural areas and to other populations, such as personnel in urban or high-need local educational agencies (LEAs) (as defined in this notice).

Absolute Priority 2: State Personnel Development Grants.

Statutory Requirements. To meet this priority, an applicant must meet the following statutory requirements:

1. State Personnel Development Plan.

An applicant must submit a State Personnel Development Plan that identifies and addresses the State and local needs for the personnel preparation and professional development of personnel, as well as individuals who provide direct supplementary aids and services to children with disabilities, and that—

(a) Is designed to enable the State to meet the requirements of section 612(a)(14) of IDEA, as amended by the ESSA, and section 635(a)(8) and (9) of IDEA;

(b) Is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional

development of personnel who serve infants, toddlers, preschoolers, and children with disabilities within the State, including—

(1) Current and anticipated personnel vacancies and shortages; and

(2) The number of preservice and in-service programs;

(c) Is integrated and aligned, to the maximum extent possible, with State plans and activities under the Elementary and Secondary Education Act of 1965, as amended (ESEA); the Rehabilitation Act of 1973, as amended; and the Higher Education Act of 1965, as amended (HEA);

(d) Describes a partnership agreement that is in effect for the period of the grant, which agreement must specify—

(1) The nature and extent of the partnership described in section 652(b) of IDEA and the respective roles of each member of the partnership, including, if applicable, an individual, entity, or agency other than the SEA that has the responsibility under State law for teacher preparation and certification; and

(2) How the SEA will work with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of the persons and organizations;

(e) Describes how the strategies and activities the SEA uses to address identified professional development and personnel needs will be coordinated with activities supported with other public resources (including funds provided under Part B and Part C of IDEA and retained for use at the State level for personnel and professional development purposes) and private resources;

(f) Describes how the SEA will align its personnel development plan with the plan and application submitted under sections 1111 and 2101(d), respectively, of the ESEA;

(g) Describes strategies the SEA will use to address the identified professional development and personnel needs and how such strategies will be implemented, including—

(1) A description of the programs and activities that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and

(2) How such strategies will be integrated, to the maximum extent possible, with other activities supported by grants funded under section 662 of IDEA, as amended by the ESSA;

(h) Provides an assurance that the SEA will provide TA to LEAs to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;

(i) Provides an assurance that the SEA will provide TA to entities that provide services to infants and toddlers with disabilities to improve the quality of professional development available to meet the needs of personnel serving such children;

(j) Describes how the SEA will recruit and retain teachers who meet the qualifications described in section 612(a)(14)(C) of IDEA, as amended by the ESSA, and other qualified personnel in geographic areas of greatest need;

(k) Describes the steps the SEA will take to ensure that poor and minority children are not taught at higher rates by teachers who do not meet the qualifications described in section 612(a)(14)(C) of IDEA, as amended by the ESSA; and

(l) Describes how the SEA will assess, on a regular basis, the extent to which the strategies implemented have been effective in meeting the performance goals described in section 612(a)(15) of IDEA, as amended by the ESSA.

2. Partnerships.

(a) Required Partners.

Applicants must establish a partnership with LEAs and other State agencies involved in, or concerned with, the education of children with disabilities, including—

(1) Not less than one institution of higher education (IHE);

(2) The State agencies responsible for administering Part C of IDEA, early education, childcare, and vocational rehabilitation programs; and

(3) In accordance with section 652(b)(3) of IDEA, if State law assigns responsibility for teacher preparation and certification to an individual, entity, or agency other than the SEA, such individual, entity, or agency. The SEA must ensure that any activities it carries out under this program that are within such partner's jurisdiction (which may include activities described in section 654(b) of IDEA) are carried out by that partner.

(b) Other Partners.

An SEA must work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, which may include—

(1) The Governor;

(2) Parents of children with disabilities ages birth through 26;

(3) Parents of nondisabled children ages birth through 26;

(4) Individuals with disabilities;

(5) Parent training and information centers or community parent resource centers funded under sections 671 and 672 of IDEA, respectively;

(6) Community based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

(7) Personnel as defined in section 651(b) of IDEA;

(8) The State advisory panel established under Part B of IDEA;

(9) The State interagency coordinating council established under Part C of IDEA;

(10) Individuals knowledgeable about vocational education;

(11) The State agency for higher education;

(12) Public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;

(13) Other providers of professional development that work with infants, toddlers, preschoolers, and children with disabilities; and

(14) Other individuals.

3. Use of Funds.

(a) Professional Development

Activities—Each SEA that receives a grant under this program must use the grant funds to support activities in accordance with the State's Personnel Development Plan, including one or more of the following:

(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities and principals, such as programs that—

(i) Provide teacher mentoring, team teaching, reduced class schedules and caseloads, and intensive professional development;

(ii) Use standards or assessments for guiding beginning teachers that are consistent with challenging State academic achievement standards and with the requirements for professional development, as defined in section 8101 of the ESEA; and

(iii) Encourage collaborative and consultative models of providing early intervention, special education, and related services.

(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively use and integrate technology—

(i) Into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decision making, school improvement efforts, and accountability;

(ii) To enhance learning by children with disabilities; and

(iii) To effectively communicate with parents.

(3) Providing professional development activities that—

(i) Improve the knowledge of special education and regular education teachers concerning—

(A) The academic and developmental or functional needs of students with disabilities; or

(B) Effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement;

(ii) Improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices, and that—

(A) Provide training in how to teach and address the needs of children with different learning styles and children who are limited English proficient;

(B) Involve collaborative groups of teachers, administrators, and, in appropriate cases, related services personnel;

(C) Provide training in methods of—

(1) Positive behavioral interventions and supports to improve student behavior in the classroom;

(2) Scientifically based reading instruction, including early literacy instruction;

(3) Early and appropriate interventions to identify and help children with disabilities;

(4) Effective instruction for children with low-incidence disabilities;

(5) Successful transitioning to postsecondary opportunities; and

(6) Using classroom-based techniques to assist children prior to referral for special education;

(D) Provide training to enable personnel to work with and involve parents in their child's education, including parents of low income and limited English proficient children with disabilities;

(E) Provide training for special education personnel and regular education personnel in planning, developing, and implementing effective and appropriate individualized education programs (IEPs); and

(F) Provide training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving those students;

(iii) Train administrators, principals, and other relevant school personnel in conducting effective IEP meetings; and

(iv) Train early intervention, preschool, and related services providers, and other relevant school personnel in conducting effective

individualized family service plan (IFSP) meetings.

(4) Developing and implementing initiatives to promote the recruitment and retention of special education teachers who meet the qualifications described in section 612(a)(14)(C) of IDEA, as amended by the ESSA, particularly initiatives that have proven effective in recruiting and retaining teachers, including programs that provide—

(i) Teacher mentoring from exemplary special education teachers, principals, or superintendents;

(ii) Induction and support for special education teachers during their first three years of employment as teachers; or

(iii) Incentives, including financial incentives, to retain special education teachers who have a record of success in helping students with disabilities.

(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as—

(i) Innovative professional development programs (which may be provided through partnerships that include IHEs), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy, which must be consistent with the definition of professional development in section 8101 of the ESEA; and

(ii) The development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning.

(6) Carrying out programs and activities that are designed to improve the quality of early intervention personnel, including paraprofessionals and primary referral sources, such as—

(i) Professional development programs to improve the delivery of early intervention services;

(ii) Initiatives to promote the recruitment and retention of early intervention personnel; and

(iii) Interagency activities to ensure that early intervention personnel are adequately prepared and trained.

(b) Other Activities—Each SEA that receives a grant under this program must use the grant funds to support activities in accordance with the State's Personnel Development Plan, including one or more of the following:

(1) Reforming special education and regular education teacher certification (including recertification) or licensing requirements to ensure that—

(i) Special education and regular education teachers have—

(A) The training and information necessary to address the full range of needs of children with disabilities across disability categories; and

(B) The necessary subject matter knowledge and teaching skills in the academic subjects that the teachers teach;

(ii) Special education and regular education teacher certification (including recertification) or licensing requirements are aligned with challenging State academic content standards; and

(iii) Special education and regular education teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students with disabilities meet challenging State student academic achievement and functional standards.

(2) Programs that establish, expand, or improve alternative routes for State certification of special education teachers for individuals with a baccalaureate or master's degree who meet the qualifications described in section 612(a)(14)(C) of IDEA, as amended by the ESSA, including mid-career professionals from other occupations, paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.

(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

(4) Developing and implementing mechanisms to assist LEAs and schools in effectively recruiting and retaining special education teachers who meet the qualifications described in section 612(a)(14)(C) of IDEA, as amended by the ESSA.

(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensure, consistent with title II of the HEA (20 U.S.C. 1021 *et seq.*).

(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teachers, except that no reciprocity agreement developed under this absolute priority or developed using funds awarded under the SPDG competition may lead to the weakening of any State teacher certification or licensing requirement.

(7) Assisting LEAs to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

(8) Developing, or assisting LEAs in developing, merit-based performance systems and strategies that provide differential and bonus pay for special education teachers.

(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic achievement and functional standards, and State assessments for all children with disabilities, to improve instructional practices and improve the academic achievement of children with disabilities.

(10) When applicable, coordinating with, and expanding centers established under section 2113(c)(18) of the ESEA, as amended by the No Child Left Behind Act of 2002, to benefit special education teachers.

(c) Contracts and Subgrants—An SEA that receives a grant under this program—

(1) Must award contracts or subgrants to LEAs, IHEs, parent training and information centers, or community parent resource centers, as appropriate, to carry out the State Personnel Development Plan; and

(2) May award contracts and subgrants to other public and private entities, including the State lead agency (LA) (as defined in this notice) under Part C of IDEA, to carry out the State Personnel Development Plan.

(d) Use of Funds for Professional Development—An SEA that receives a grant under this program must use—

(1) Not less than 90 percent of the funds the SEA receives under the grant for any fiscal year for the Professional Development Activities described in paragraph (a); and

(2) Not more than 10 percent of the funds the SEA receives under the grant for any fiscal year for the Other Activities described in paragraph (b).

Absolute Priority 3: Improving Engagement between Schools and Families.

Projects designed to develop the capacity of administrators and educators to develop systems and use strategies that build trust and engagement with families, while further strengthening the role families play in their child's development and learning. Projects must—

(a) Provide training and coaching to assist administrators to—

(1) Develop and implement policies and programs that recognize families' funds of knowledge, connect family engagement to student learning, and create welcoming, inviting cultures; and

(2) Create systems that support staff and families in meaningful engagement (*i.e.*, Leading by Convening and the Dual-Capacity Framework. For more information visit www.dualcapcity.org and www.ncsl.wested.org/resources/leading-by-convening);

(b) Provide training and coaching to assist educators and early intervention providers to—

(1) Build their knowledge, attitudes, beliefs, aspirations, and behaviors about effective strategies to engage families in their child's learning;

(2) Work with families to make collaborative, data-based decisions in the development and implementation of the child's IEP; and

(3) Provide information and resources to families that enable them to support their children's learning and behavior at home; and

(c) Provide training and coaching so they can—

(1) Meaningfully participate in the development and implementation of their child's IEP;

(2) Participate in data-based decision making related to their child's education; and

(3) Further their child's learning at home.

In their applications, States must describe how their projects will meet these program requirements. In addition to these requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under *Common Requirements*.

Competitive Preference Priorities: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these four priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award additional points to an application that meets up to two of these competitive preference priorities. An applicant is not required to address any of the competitive preference priorities. If an applicant addresses the competitive preference priorities, the applicant must indicate which one or two competitive preference priorities they are responding to in the application. We award up to an additional 5 points to an application, depending on how well the application meets Competitive Preference Priority 1. For Competitive Preference Priorities 2, 3, and 4, we

award up to an additional 2 points to an application, depending on how well the application meets the competitive preference priority.

Competitive Preference Priority 1: Providing Career Pathways for Those Interested in Becoming Fully Certified Special Education Teachers, Including Paraprofessionals, Through Residency, Grow Your Own (GYO), and Registered Apprenticeships Programs (up to 5 points).

Projects designed to increase the number of fully certified special education teachers by establishing a new, or enhancing an existing, teacher residency, GYO, or registered teacher apprenticeship program that minimizes or eliminates the cost of certification for special education teacher candidates and provides opportunities for candidates to be paid, including being provided with a stipend (which, for programs that include paid experience for the duration of the certification program, can be met through paragraph (i), below), to cover the time spent gaining classroom experience during their certification program.

A project implementing a new or enhanced teacher residency, GYO, or registered teacher apprenticeship program must—

(a) Use data-driven strategies and evidence-based approaches to increase recruitment, successful completion, and retention of the special education teachers supported by the project;

(b) Provide standards for participants to enter into and complete the program;

(c) Be aligned to evidence-based practices for effective educator preparation;

(d) Have little to no financial burden for program participants, or provide for loan forgiveness, grants, or scholarship programs;

(e) Provide opportunities for candidates to be paid, including being provided with a stipend, to cover time spent in clinical experience during their certification program;

(f) Develop a plan to monitor program quality;

(g) Require completion of a bachelor's degree either before entering or as a result of the teacher residency, GYO, or teacher apprenticeship program;

(h) Result in the satisfaction of all requirements for full State teacher licensure or certification, excluding emergency, temporary, provisional, or other sub-standard licensure or certification;

(i) Provide increasing levels of responsibility for the resident/GYO participant/apprentice during at least one year of paid on-the-job learning/clinical experience, during which a

mentor teacher is the teacher of record; and

(j) Develop a plan to ensure the program has funding after the end of the project period.

In their applications, States must describe how their projects will meet these program requirements. In addition to these requirements, to be considered for funding under this priority, applicants must address the application and administrative requirements under *Common Requirements*.

Competitive Preference Priority 2: Supporting Emergency Certified Special Education Teachers to Become Fully Certified (up to 2 points).

Projects designed to increase the number of fully certified special education teachers by implementing plans that address the emergency certification needs of personnel who work with children with disabilities. The plans must—

(a) Identify the barriers and challenges to full certification that are experienced by special education personnel on emergency certifications;

(b) Include evidence-based strategies to address those barriers and challenges and assist special education personnel on emergency certifications to obtain full certification, consistent with State-approved or State-recognized requirements, within three years;

(c) Include training and coaching on, at a minimum—

(1) The skills needed to collaboratively develop, implement, and monitor standards-based IEPs;

(2) High-leverage and evidence-based instructional and classroom management practices; and

(3) The provision of wrap-around services (*e.g.*, social, emotional, and mental health supports), special education services, and other supports for children with disabilities; and

(d) Provide participating special education personnel on emergency certifications with opportunities to apply the evidence-based skills and practices described in paragraph (c) in the classroom.

In their applications, States must describe how their projects will meet these program requirements. In addition to these requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under *Common Requirements*.

Competitive Preference Priority 3: Person-Centered IEPs that Support Instructional Progress (up to 2 points).

Projects designed to provide pre-service and in-service training to school and district personnel, including IEP team members (*e.g.*, special education

and general education teachers, related service personnel who work with children with disabilities) and administrators, to improve their skills in developing and implementing person-centered IEPs that support instructional progress and improve functional outcomes¹ for children with disabilities. Projects must—

(a) Provide training and coaching to administrators and IEP team members to increase their ability to develop, implement, and monitor person-centered IEPs that support instructional progress so that they can—

(1) Use appropriate data to determine the child's instructional and functional strengths and needs;

(2) Increase the child's learning time and opportunities with general education peers, as appropriate, based on research;

(3) Choose and use evidence-based practices for core instruction; and

(4) Supplement core instruction with special education services.

In their applications, States must describe how their projects will meet these program requirements. In addition to these requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under *Common Requirements*.

Competitive Preference Priority 4: Principals as Instructional Leaders Who Support Collaborative Service Provision (up to 2 points).

Projects designed to provide professional development to improve the instructional leadership provided by principals and other school leaders, district leaders, and teacher leaders to promote educational equity for children with disabilities. Projects must provide training and coaching to assist administrators to—

(a) Create and support equitable school schedules and other operations that enable collaborative services from general and special education staff;

(b) Support schoolwide inclusionary practices within a multi-tiered systems of support (MTSS) framework;

(c) Support evidence-based professional development for their staff related to—

(1) Effective content instruction;

(2) Data for decision-making and continuous progress monitoring;

(3) IEP development and implementation; and

(4) Wrap-around services;

(d) Actively engage families and school communities to identify and

address concerns regarding, and barriers to, accessibility, equity, and inclusiveness, using frameworks such as universal design; and

(e) Provide administrators structured learning opportunities, such as through a cohort model, mentoring, one-on-one coaching, networking to build a professional community, and applied learning opportunities, such as problem-solving related to the needs of individual children.

In their applications, States must describe how their projects will meet these program requirements. In addition to these requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under *Common Requirements*.

Common Requirements:

In addition to the requirements contained in these priorities, to be considered for funding, applicants must meet the following application and administrative requirements:

(a) Demonstrate, in the narrative section of the application under "Significance," how the proposed project will—

(1) Align with and integrate other State initiatives and programs, as well as district and local improvement plans, to leverage existing professional development and data systems;

(2) Develop and implement plans to sustain the grant program after the grant funding has ended; and

(3) Integrate family engagement into all project efforts by supporting capacity building for personnel and families.

(b) Demonstrate, in the narrative section of the application under "Quality of Project Services," how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Develop the knowledge and ability of personnel to be culturally responsive and engage children and families with a strengths-based approach;

(ii) Engage students, families, and community members to assess the appropriateness and impact of the intervention, program, or strategies; and

(iii) Review program procedures and resources to ensure a diversity of perspectives are brought into the project; and

(2) Achieve the project's goals and objectives. To meet this requirement, the applicant must provide—

(i) Either a logic model or theory of action (to be provided in appendix A),

which demonstrates how the proposed project will achieve intended measurable outcomes;

(ii) A description of proposed in-State and national partners that the project will work with to achieve the goals and objectives of the grant and how the impact of these partnerships will be measured; and

(iii) A description of how the project will be based on current research and make use of evidence-based practices. To meet this requirement, the applicant must describe—

(A) The current research base for the chosen interventions;

(B) The evidence-based model or practices to be used in the project's professional development activities; and

(C) How implementation science will be used to support full and sustained use of evidence-based practices and result in sustained systems of implementation support.

(c) In the narrative section of the application under "Quality of the project evaluation," include an evaluation plan for the project developed in consultation with and implemented by a third-party² evaluator. The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model or theory of action required under paragraph (b)(2)(i) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model or theory of action and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data

² A "third-party" evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

¹ An IEP that supports instructional progress is an IEP that focuses on the academic, vocational, developmental, and social needs of the child and allows the child to benefit from instruction.

will be available annually for the annual performance report to the Department; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under “Adequacy of resources,” how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project’s intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

(e) Demonstrate, in the narrative section of the application under “Quality of the management plan,” how the proposed management plan will ensure that the project’s intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(1) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable;

(2) Timelines and milestones for accomplishing the project tasks;

(3) How key project personnel and any consultants and subcontractors will be allocated to the project and how these allocations are appropriate and adequate to achieve the project’s intended outcomes; and

(4) How the proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Provide an assurance that any project website will include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility;

(3) Include, in the budget, attendance at the following:

(i) An annual one and one-half day SPDG National Meeting in the Washington, DC area during each year of the project period; and

(ii) A three-day project directors’ conference in Washington, DC, during each year of the project period, provided that, if the conference is conducted virtually, the project must reallocate unused travel funds no later than the end of the third quarter of each budget period; and

(4) Budget \$6,000 annually for support of the SPDG program network and website currently administered by the University of Oregon (www.signetwork.org).

Under 34 CFR 75.253, the Secretary may reduce continuation awards or discontinue awards in any year of the project period for excessive carryover balances, a failure to make substantial progress, or has not maintained financial and administrative management systems that meet requirements in 2 CFR 200.302, Financial management, and § 200.303, Internal controls. The Department intends to closely monitor unobligated balances and substantial progress under this program and may reduce or discontinue funding accordingly.

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(2016). *Grow your own teachers report: Enhancing educator pathways to address teacher shortage and increase diversity*. www.pesb.wa.gov/resources-and-reports/reports/grow-your-own-teachers-report/.

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Texas Comprehensive Center. (2018). *Grow your own teachers initiatives resources*. American Institutes for Research. <https://compcenternetwork.org/resources/resource/4290/grow-your-own-teachers-initiatives-resources>.

Definitions: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following definitions apply to this competition. We provide the source of the definitions in parentheses.

Demonstrates a rationale means a key project component included in the project’s logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes. (34 CFR 77.1)

Evidence-based means, for purposes of Absolute Priority 1, practices for which there is strong evidence or moderate evidence of effectiveness (2012 NFP); and for purposes of the competitive preference priorities, the proposed project component is supported by one or more of strong evidence, moderate evidence, promising evidence, or evidence that demonstrates a rationale (34 CFR 77.1).

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (e.g., sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbooks:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project

component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (e.g., assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (e.g., a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment. (34 CFR 77.1)

Fidelity means the delivery of instruction in the way in which it was designed to be delivered. (2012 NFP)

High-need LEA means, in accordance with section 2102(3) of the ESEA, an LEA—

(a) That serves not fewer than 10,000 children from families with incomes below the poverty line (as that term is defined in section 8101(41) of the ESEA), or for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line; and

(b) For which there is (1) a high percentage of teachers not teaching in the academic subjects or grade levels that the teachers were trained to teach, or (2) a high percentage of teachers with emergency, provisional, or temporary certification or licensing. (2012 NFP)

Lead agency means the agency designated by the State's Governor under section 635(a)(10) of IDEA and 34 CFR 303.120 that receives funds under section 643 of IDEA to administer the State's responsibilities under part C of IDEA. (34 CFR 303.22)

Local educational agency (LEA) means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. (Section 602(19) of IDEA (20 U.S.C. 1401(19)))

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (i.e., the active "ingredients" that are hypothesized to be critical to achieving the relevant

outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes. (34 CFR 77.1)

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a "strong evidence base" or "moderate evidence base" for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a "positive effect" or "potentially positive effect" on a relevant outcome based on a "medium to large" extent of evidence, with no reporting of a "negative effect" or "potentially negative effect" on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbooks, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (i.e., favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (e.g., State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy the requirement in this paragraph (iii)(D). (34 CFR 77.1)

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (e.g., training teachers on instructional practices for English learners and follow-on coaching for these teachers). (34 CFR 77.1)

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following—

(i) A practice guide prepared by WWC reporting a "strong evidence base" or "moderate evidence base" for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting a "positive effect" or "potentially positive effect" on a relevant outcome with no reporting of a "negative effect" or "potentially negative effect" on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (e.g., a study using regression methods to account for differences between a treatment group and a comparison group); and

(B) Includes at least one statistically significant and positive (i.e., favorable) effect on a relevant outcome. (34 CFR 77.1)

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (e.g., establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbooks. (34 CFR 77.1)

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program. (34 CFR 77.1)

State educational agency means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law. (Section 602(32) of IDEA (20 U.S.C. 1401(32)))

Strong evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following—

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1

of the WWC Handbook reporting a “strong evidence base” for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbook reporting a “positive effect” on a relevant outcome based on a “medium to large” extent of evidence, with no reporting of a “negative effect” or “potentially negative effect” on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbook, or otherwise assessed by the Department using version 4.1 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (*i.e.*, favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbook; and

(D) Is based on a sample from more than one site (*e.g.*, State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement. (34 CFR 77.1)

What Works Clearinghouse (WWC) Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Standards Handbook, Versions 4.0 or 4.1, and WWC Procedures Handbook, Versions 4.0 or 4.1, or in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation. (34 CFR 77.1)

Note: The What Works Clearinghouse Procedures and Standards Handbook (Version 4.1), as well as the more recent What Works Clearinghouse Handbooks released in August 2022 (Version 5.0), are available at <https://ies.ed.gov/ncee/wwc/Handbooks>.

Program Authority: 20 U.S.C. 1451–1455.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Guidance for Federal Financial Assistance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The 2012 NFP. (e) The 2024 NFP.

Note: The U.S. Department of Education will implement the provisions included in the OMB final rule, *OMB Guidance for Federal Financial Assistance*, which amends 2 CFR parts 25, 170, 175, 176, 180, 182, 183, 184, and 200, on October 1, 2024. Grant applicants that anticipate a performance period start date on or after October 1, 2024, should follow the provisions stated in the OMB Guidance for Federal Financial Assistance (89 FR 30046, April 22, 2024) when preparing an application. For more information about these updated regulations please visit: <https://www.cfo.gov/resources/uniform-guidance/>.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: \$3,571,054.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2025 from the list of unfunded applications from this competition.

Estimated Range of Awards: \$500,000–\$2,100,000 (for the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico). States may not receive less than \$500,000 in each year of the grant and must submit a budget in their application for not less than \$500,000 in each year of the grant. In the case of outlying areas (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands), awards will be not less than \$80,000.

Note: We will set the amount of each award after considering—

(1) The amount of funds available for making the grants;

(2) The relative population of the State or outlying area;

(3) The types of activities proposed by the State or outlying area;

(4) The alignment of proposed activities with section 612(a)(14) of IDEA, as amended by the ESSA;

(5) The alignment of proposed activities with State plans and applications submitted under sections 1111 and 2101(d), respectively, of the ESEA; and

(6) The use, as appropriate, of scientifically based research and activities.

Using the same considerations, the Secretary funded these selected applications for FY 2023 at the following levels:

State	FY 2023 funding amount
Alabama	\$1,139,436
Connecticut	867,060
Kentucky	570,000
Virginia	2,005,409

Estimated Average Size of Awards: \$1,000,000 excluding the outlying areas.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Not less than one year and not more than five years.

III. Eligibility Information

1. *Eligible Applicants:* An SEA of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

Note: Public Law 95–134, which permits the consolidation of grants to the outlying areas, does not apply to funds received under this competition.

2.a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see <https://www2.ed.gov/about/offices/list/ocfo/intro.html>.

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR

part 200, subpart E of the Uniform Guidance.

3. *Subgrantees*: A grantee under this competition must award contracts and subgrants as described in Absolute Priority 2 (paragraph (3)(c) under Statutory Requirements, Use of Funds). See section 654(c) of IDEA.

4. *Other General Requirements*:

(a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants for, and recipients of, funding must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Application Submission*

Instructions: Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs, which contain requirements and information on how to submit an application.

2. *Intergovernmental Review*: This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make an award by the end of FY 2024.

3. *Funding Restrictions*: We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit*: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 70 pages and (2) use the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well

as all text in charts, tables, figures, graphs, and screen shots.

- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria*: The selection criteria for this competition are from 34 CFR 75.210 and are listed below:

- (a) *Significance (20 points)*.
- (1) The Secretary considers the significance of the proposed project.
- (2) In determining the significance of the proposed project, the Secretary considers the following factors:
- (i) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.
- (ii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.
- (iii) The likelihood that the proposed project will result in system change or improvement.

(b) *Quality of the project design (25 points)*.

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

- (i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.
- (ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.
- (iii) The extent to which the services to be provided by the proposed project

involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(iv) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(v) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(c) *Quality of the project personnel (10 points)*.

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel.

(d) *Adequacy of resources and management plan (20 points)*.

(1) The Secretary considers the adequacy of resources and management plan for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(ii) The extent to which the budget is adequate to support the proposed project.

(iii) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(v) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(e) *Quality of the project evaluation (25 points)*.

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions, and under 2 CFR 3474.10, in

appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

6. *In General:* In accordance with the Guidance for Federal Financial Assistance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We also may notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you

receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, we have established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the SPDG program. These measures assess the extent to which—

- Projects use professional development practices supported by evidence to support the attainment of identified competencies;
- Participants in SPDG professional development demonstrate improvement in implementation of SPDG-supported practices over time;
- Projects use SPDG professional development funds to provide activities designed to sustain the use of SPDG-supported practices; and
- Projects improve outcomes for children with disabilities.

Each grantee funded under this competition must collect and annually report data related to its performance on these measures in the project's annual and final performance report to the Department in accordance with section 653(d) of IDEA and 34 CFR 75.590. Applicants should discuss in the application narrative how they propose to collect performance data for these measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance

from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2024–15044 Filed 7–5–24; 11:15 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual hybrid subcommittee meeting of the whole of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, August 5, 2024; 9 a.m.–3:30 p.m. PDT.

ADDRESSES: Washington State University Tri-Cities, Room 120/120A, Consolidated Information Center, 2770 University Drive, Richland, Washington

99354. This hybrid subcommittee meeting of the whole will be in-person at Washington State University Tri-Cities and virtually. To receive the virtual access information and call-in number, please contact the Deputy Designated Federal Officer, Lindsay Somers, at the telephone number or email listed below at least five days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Lindsay Somers, Deputy Designated Federal Officer, U.S. Department of Energy, Hanford Office of Communications, Richland Operations Office, P.O. Box 550, Richland, WA, 99354; Phone: (509) 376–0923; or Email: lindsay.somers@rl.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda:

- Briefing on Hanford Sitewide Permit, Revision 9A
- Discussion on Hanford Sitewide Permit, Revision 9A

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Lindsay Somers at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or within five business days after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Lindsay Somers. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available at the following website: <https://www.hanford.gov/page.cfm/hab/CommitteeMeetingInformation/>

*Committee of the Whole Meeting
Summaries.*

Signing Authority: This document of the Department of Energy was signed on July 2, 2024, by David Borak, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 2, 2024.

Treena V. Garrett,

*Federal Register Liaison Officer, U.S.
Department of Energy.*

[FR Doc. 2024-14964 Filed 7-8-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06-129-009.

Applicants: Capital Research and Management Company.

Description: Request for Reauthorization and Extension of Blanket Authorizations Under Section 203 of the Federal Power Act of Capital Research and Management Co., et al.

Filed Date: 6/27/24.

Accession Number: 20240627-5295.

Comment Date: 5 p.m. ET 7/18/24.

Docket Numbers: EC24-94-000.

Applicants: Homer City Generation L.P., Knighthead Capital Management, LLC.

Description: Application for authorization under Section 203 of the Federal Power Act of Homer City Generation, L.P.

Filed Date: 6/25/24.

Accession Number: 20240625-5190.

Comment Date: 5 p.m. ET 7/16/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-1817-032.

Applicants: Southwestern Public Service Company.

Description: Triennial Market Power Analysis for Central Region of Southwestern Public Service Company.

Filed Date: 6/27/24.

Accession Number: 20240627-5291.

Comment Date: 5 p.m. ET 8/26/24.

Docket Numbers: ER10-2738-013; ER11-4267-022; ER20-2586-004; ER20-2587-003; ER20-2669-003.

Applicants: Neosho Ridge Wind, LLC, Kings Point Wind, LLC, North Fork Ridge Wind, LLC, Algonquin Energy Services Inc., The Empire District Electric Company.

Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of The Empire District Electric Company, et al.

Filed Date: 6/27/24.

Accession Number: 20240627-5298.

Comment Date: 5 p.m. ET 8/26/24.

Docket Numbers: ER12-164-025; ER10-1882-013; ER10-1894-013; ER10-2563-009; ER18-2203-005; ER19-1402-004; ER20-2288-005; ER22-2046-004.

Applicants: Sapphire Sky Wind Energy LLC, Tatanka Ridge Wind, LLC, Coyote Ridge Wind, LLC, Upper Michigan Energy Resources Corporation, Wisconsin Electric Power Company, Wisconsin Public Service Corporation, Wisconsin River Power Company, Bishop Hill Energy III LLC.

Description: Triennial Market Power Analysis for Central Region of Bishop Hill Energy III LLC, et al.

Filed Date: 6/28/24.

Accession Number: 20240628-5374.

Comment Date: 5 p.m. ET 8/27/24.

Docket Numbers: ER13-1910-004; ER16-1018-003; ER20-2771-002.

Applicants: Guzman Western Slope LLC, Guzman Renewable Energy Partners LLC, Guzman Power Markets.

Description: Triennial Market Power Analysis for Central Region of Guzman Energy LLC, et al.

Filed Date: 6/27/24.

Accession Number: 20240627-5294.

Comment Date: 5 p.m. ET 8/26/24.

Docket Numbers: ER18-803-002.

Applicants: EDF Trading North America, LLC.

Description: Triennial Market Power Analysis for Central Region of EDF Trading North America, LLC.

Filed Date: 6/26/24.

Accession Number: 20240626-5200.

Comment Date: 5 p.m. ET 8/26/24.

Docket Numbers: ER20-1505-008.

Applicants: Basin Electric Power Cooperative.

Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of Basin Electric Power Cooperative.

Filed Date: 6/27/24.

Accession Number: 20240627-5293.

Comment Date: 5 p.m. ET 8/26/24.

Docket Numbers: ER20-2379-006; ER10-310-006; ER10-2738-014; ER15-2631-011; ER16-2703-008; ER22-2513-003.

Applicants: Deerfield Wind Energy 2, LLC, Deerfield Wind Energy, LLC, Odell Wind Farm, LLC, The Empire District Electric Company, Algonquin Energy Services Inc., Sugar Creek Wind One LLC.

Description: Triennial Market Power Analysis for Central Region of Sugar Creek Wind One LLC, et al.

Filed Date: 6/27/24.

Accession Number: 20240627-5300.

Comment Date: 5 p.m. ET 8/26/24.

Docket Numbers: ER21-2818-006.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Compliance filing: Revisions to Rate Schedule No. 281 in Compliance with the May 23 Order to be effective 11/1/2021.

Filed Date: 6/28/24.

Accession Number: 20240628-5346.

Comment Date: 5 p.m. ET 7/19/24.

Docket Numbers: ER24-1576-001.

Applicants: Maple Flats Solar Energy Center LLC.

Description: Compliance filing: Revised Tariff Filing to be effective 8/28/2024.

Filed Date: 6/28/24.

Accession Number: 20240628-5329.

Comment Date: 5 p.m. ET 7/19/24.

Docket Numbers: ER24-1711-001.

Applicants: Split Rail Solar Energy LLC.

Description: Compliance filing: Revised Tariff Changes Filing to be effective 8/28/2024.

Filed Date: 6/28/24.

Accession Number: 20240628-5322.

Comment Date: 5 p.m. ET 7/19/24.

Docket Numbers: ER24-2112-001.

Applicants: Public Service Company of New Mexico.

Description: Tariff Amendment: Amendment to Effective Date to be effective 5/29/2024.

Filed Date: 6/28/24.

Accession Number: 20240628-5339.

Comment Date: 5 p.m. ET 7/19/24.

Docket Numbers: ER24-2425-000.

Applicants: Buckeye Plains Solar Project, LLC.

Description: § 205(d) Rate Filing: Joint Application for Market-Based Rate Authority to be effective 7/10/2024.

Filed Date: 6/28/24.

Accession Number: 20240628-5295.

Comment Date: 5 p.m. 7/19/24.

Docket Numbers: ER24-2426-000.

Applicants: Pickaway County Solar Project, LLC.

Description: § 205(d) Rate Filing: Joint Application for Market-Based Rate Authority to be effective 7/10/2024.

Filed Date: 6/28/24.

Accession Number: 20240628–5300.

Comment Date: 5 p.m. 7/19/24.

Docket Numbers: ER24–2427–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: WAPA-Farmington Pseudo-Tie Coordination to be effective 7/1/2024.

Filed Date: 6/28/24.

Accession Number: 20240628–5304.

Comment Date: 5 p.m. 7/19/24.

Docket Numbers: ER24–2428–000.

Applicants: EnerPenn USA LLC.

Description: Tariff Amendment: EnerPenn USA LLC Notice of MBR Cancellation Filing to be effective 6/29/2024.

Filed Date: 6/28/24.

Accession Number: 20240628–5311.

Comment Date: 5 p.m. 7/19/24.

Docket Numbers: ER24–2429–000.

Applicants: Public Service Company of New Mexico.

Description: Compliance filing: Amendment to Update eTariff Priority Order to be effective 1/27/2020.

Filed Date: 6/28/24.

Accession Number: 20240628–5342.

Comment Date: 5 p.m. 7/19/24.

Docket Numbers: ER24–2430–000.

Applicants: New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Jul 2024 Membership Filing to be effective 7/1/2024.

Filed Date: 6/28/24.

Accession Number: 20240628–5343.

Comment Date: 5 p.m. 7/19/24.

Docket Numbers: ER24–2431–000.

Applicants: Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: Duke Energy Progress, LLC submits tariff filing per 35.13(a)(2)(iii): DEC–DEP Revisions to Attachment K to Joint OATT (LGIP/LGIA) to be effective 9/1/2024.

Filed Date: 6/28/24.

Accession Number: 20240628–5352.

Comment Date: 5 p.m. 7/19/24.

Docket Numbers: ER24–2432–000.

Applicants: Lockhart Solar PV, LLC.

Description: Baseline eTariff Filing: Facilities Use Agreements to be effective 8/12/2024.

Filed Date: 7/1/24.

Accession Number: 20240701–5123.

Comment Date: 5 p.m. 7/22/24.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: July 1, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–14952 Filed 7–8–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–468–005.

Applicants: Google Energy LLC.

Description: Triennial Market Power Analysis for Central Region of Google Energy LLC.

Filed Date: 6/28/24.

Accession Number: 20240628–5382.

Comment Date: 5 p.m. ET 8/27/24.

Docket Numbers: ER10–2136–023.

Applicants: Invenergy Cannon Falls LLC.

Description: Triennial Market Power Analysis for Central Region of Invenergy Cannon Falls LLC.

Filed Date: 6/28/24.

Accession Number: 20240628–5385.

Comment Date: 5 p.m. ET 8/27/24.

Docket Numbers: ER10–2615–017; ER11–2335–021.

Applicants: Plum Point Energy Associates, LLC, Plum Point Services Company, LLC.

Description: Triennial Market Power Analysis for Central Region of Plum Point Energy Associates, LLC, et al.

Filed Date: 6/28/24.

Accession Number: 20240628–5383.

Comment Date: 5 p.m. ET 8/27/24.

Docket Numbers: ER13–1419–001; ER13–122–005; ER13–123–002.

Applicants: ExxonMobil LaBarge Shute Creek Treating Facility, ExxonMobil Beaumont Complex, ExxonMobil Baton Rouge Complex.

Description: Triennial Market Power Analysis and Change in Status for Central Region of ExxonMobil Baton Rouge Complex, et al.

Filed Date: 6/28/24.

Accession Number: 20240628–5381.

Comment Date: 5 p.m. ET 8/27/24.

Docket Numbers: ER14–2144–010;

ER10–2178–044; ER10–2192–044;

ER11–2009–027; ER11–2011–027;

ER11–3989–023; ER12–2201–018;

ER12–2311–018; ER13–1536–028.

Applicants: Constellation Energy Generation, LLC, Beebe Renewable Energy, LLC, Harvest II Windfarm, LLC, Michigan Wind 2, LLC, Harvest Windfarm, LLC, Michigan Wind 1, LLC, Constellation Energy Commodities Group Maine, LLC, Constellation NewEnergy, Inc., Beebe 1B Renewable Energy, LLC.

Description: Triennial Market Power Analysis for Central Region of Beebe 1B Renewable Energy, LLC, et al.

Filed Date: 6/28/24.

Accession Number: 20240628–5377.

Comment Date: 5 p.m. ET 8/27/24.

Docket Numbers: ER16–1720–028; ER21–2137–012.

Applicants: IR Energy Management LLC, Invenergy Energy Management LLC.

Description: Triennial Market Power Analysis for Central Region of Invenergy Energy Management LLC, et al.

Filed Date: 6/28/24.

Accession Number: 20240628–5389.

Comment Date: 5 p.m. ET 8/27/24.

Docket Numbers: ER16–2035–006.

Applicants: Black Oak Wind, LLC.

Description: Triennial Market Power Analysis for Central Region of Black Oak Wind, LLC.

Filed Date: 6/28/24.

Accession Number: 20240628–5388.

Comment Date: 5 p.m. ET 8/27/24.

Docket Numbers: ER17–2088–006. *Applicants:* Apple Blossom Wind, LLC.

Description: Triennial Market Power Analysis for Central Region of Apple Blossom Wind, LLC.

Filed Date: 6/28/24.
Accession Number: 20240628–5387.
Comment Date: 5 p.m. ET 8/27/24.
Docket Numbers: ER17–2245–004.
Applicants: Moffett Solar 1, LLC.
Description: Notice of Change in Status of Moffett Solar 1, LLC.
Filed Date: 6/28/24.
Accession Number: 20240628–5378.
Comment Date: 5 p.m. ET 7/19/24.
Docket Numbers: ER20–113–005; ER20–67–005; ER20–116–005.
Applicants: Evergy Metro, Inc., Evergy Kansas Central, Inc., Evergy Missouri West, Inc.
Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of Evergy Missouri West, Inc., et al.
Filed Date: 6/28/24.
Accession Number: 20240628–5375.
Comment Date: 5 p.m. ET 8/27/24.
Docket Numbers: ER21–2082–002.
Applicants: Citizens S-Line Transmission LLC.
Description: Compliance filing: Compliance Filing and Request to Amend Formula Rate Protocols to be effective 12/31/9998.
Filed Date: 7/1/24.
Accession Number: 20240701–5300.
Comment Date: 5 p.m. ET 7/22/24.
Docket Numbers: ER22–2091–006.
Applicants: Calhoun Solar Energy LLC.
Description: Triennial Market Power Analysis for Central Region of Calhoun Solar Energy LLC.
Filed Date: 6/28/24.
Accession Number: 20240628–5386.
Comment Date: 5 p.m. ET 8/27/24.
Docket Numbers: ER22–2556–002; ER21–2379–001.
Applicants: Rainbow Energy Center, LLC, Rainbow Energy Marketing Corporation.
Description: Triennial Market Power Analysis for Central Region of Rainbow Energy Marketing Corporation, et al.
Filed Date: 7/1/24.
Accession Number: 20240701–5155.
Comment Date: 5 p.m. ET 8/30/24.
Docket Numbers: ER22–2703–004.
Applicants: Pattern Energy Management Services LLC.
Description: Triennial Market Power Analysis for Central Region of Pattern Energy Management Services LLC.
Filed Date: 6/28/24.
Accession Number: 20240628–5384.
Comment Date: 5 p.m. ET 8/27/24.
Docket Numbers: ER23–2874–003.
Applicants: NorthWestern Energy Public Service Corporation.
Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of NorthWestern Energy Public Service Corporation.

Filed Date: 6/28/24.
Accession Number: 20240628–5379.
Comment Date: 5 p.m. ET 8/27/24.
Docket Numbers: ER24–2433–000.
Applicants: Lockhart Solar PV II, LLC.
Description: Baseline eTariff Filing: Facilities Use Agreements to be effective 8/12/2024.
Filed Date: 7/1/24.
Accession Number: 20240701–5128.
Comment Date: 5 p.m. ET 7/22/24.
Docket Numbers: ER24–2434–000.
Applicants: Lockhart CL ESS I, LLC.
Description: Baseline eTariff Filing: Certificate of Concurrence for Switchyard Facilities Use Agreement to be effective 8/12/2024.
Filed Date: 7/1/24.
Accession Number: 20240701–5170.
Comment Date: 5 p.m. ET 7/22/24.
Docket Numbers: ER24–2435–000.
Applicants: Lockhart CL ESS II, LLC.
Description: Baseline eTariff Filing: Certificate of Concurrence for Switchyard Facilities Use Agreement to be effective 8/12/2024.
Filed Date: 7/1/24.
Accession Number: 20240701–5174.
Comment Date: 5 p.m. ET 7/22/24.
Docket Numbers: ER24–2436–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3125R16 Basin Electric Power Cooperative NITSA and NOA to be effective 6/1/2024.
Filed Date: 7/1/24.
Accession Number: 20240701–5204.
Comment Date: 5 p.m. ET 7/22/24.
Docket Numbers: ER24–2437–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2024–07–01_SA 4304 ITC Midwest-IPL GIA (J1359) to be effective 6/20/2024.
Filed Date: 7/1/24.
Accession Number: 20240701–5225.
Comment Date: 5 p.m. ET 7/22/24.
Docket Numbers: ER24–2438–000.
Applicants: Lockhart Transmission Holdings, LLC.
Description: § 205(d) Rate Filing: Facilities Use Agreements to be effective 8/12/2024.
Filed Date: 7/1/24.
Accession Number: 20240701–5230.
Comment Date: 5 p.m. ET 7/22/24.
Docket Numbers: ER24–2439–000.
Applicants: Avista Corporation.
Description: § 205(d) Rate Filing: Avista RS No. T1229, NorthWestern Energy Dynamic Transfer BA Operating Agreement to be effective 7/2/2024.
Filed Date: 7/1/24.
Accession Number: 20240701–5250.
Comment Date: 5 p.m. ET 7/22/24.
Docket Numbers: ER24–2440–000.

Applicants: Puget Sound Energy, Inc.
Description: § 205(d) Rate Filing: NorthernGrid Funding Agreement and Certificate of Concurrence to be effective 1/1/2024.
Filed Date: 7/1/24.
Accession Number: 20240701–5259.
Comment Date: 5 p.m. ET 7/22/24.
Docket Numbers: ER24–2441–000.
Applicants: Lockhart CL ESS I, LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence for Facilities Use Agreement to be effective 8/12/2024.
Filed Date: 7/1/24.
Accession Number: 20240701–5283.
Comment Date: 5 p.m. ET 7/22/24.
Docket Numbers: ER24–2442–000.
Applicants: Lockhart Solar PV, LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence for Facilities Use Agreement to be effective 8/12/2024.
Filed Date: 7/1/24.
Accession Number: 20240701–5288.
Comment Date: 5 p.m. ET 7/22/24.
Docket Numbers: ER24–2443–000.
Applicants: Lockhart CL ESS II, LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence for Facilities Use Agreement to be effective 8/12/2024.
Filed Date: 7/1/24.
Accession Number: 20240701–5291.
Comment Date: 5 p.m. ET 7/22/24.
Docket Numbers: ER24–2444–000.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2024–07–01 Petition for Limited Tariff Waiver of CAISO Corp to be effective N/A.
Filed Date: 7/1/24.
Accession Number: 20240701–5293.
Comment Date: 5 p.m. ET 7/22/24.
Docket Numbers: ER24–2445–000.
Applicants: Lockhart Solar PV II, LLC.
Description: § 205(d) Rate Filing: Certificate of Concurrence for Facilities Use Agreement to be effective 8/12/2024.
Filed Date: 7/1/24.
Accession Number: 20240701–5295.
Comment Date: 5 p.m. ET 7/22/24.
 The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.
 Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is

necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Dated: July 1, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-14951 Filed 7-8-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24-82-000.
Applicants: EnLink LIG, LLC.
Description: § 284.123(g) Rate Filing: SOC changes 2024 to be effective 8/1/2024.
Filed Date: 6/28/24.
Accession Number: 20240628-5250.
Comment Date: 5 p.m. ET 7/19/24.
§ 284.123(g) Protest: 5 p.m. ET 8/27/24.
Docket Numbers: RP24-862-000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20240628 Negotiated Rate to be effective 7/1/2024.
Filed Date: 6/28/24.
Accession Number: 20240628-5246.
Comment Date: 5 p.m. ET 7/10/24.
Docket Numbers: RP24-863-000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Negotiated rates—Various July 1, 2024, Releases to be effective 7/1/2024.
Filed Date: 6/28/24.

Accession Number: 20240628-5259.
Comment Date: 5 p.m. ET 7/10/24.
Docket Numbers: RP24-864-000.
Applicants: Sabine Pipe Line LLC.
Description: Compliance filing: Compliance July 2024 to be effective 7/1/2024.
Filed Date: 6/28/24.
Accession Number: 20240628-5266.
Comment Date: 5 p.m. ET 7/10/24.
Docket Numbers: RP24-866-000.
Applicants: Trailblazer Pipeline Company LLC.
Description: § 4(d) Rate Filing: TPC 2024-06-28 Trailblazer Conversion Project (CP22-468) Implementation to be effective 8/1/2024.
Filed Date: 6/28/24.
Accession Number: 20240628-5324.
Comment Date: 5 p.m. ET 7/10/24.
Docket Numbers: RP24-867-000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: TGP Clean Up Filing June 28, 2024 to be effective 7/31/2024.
Filed Date: 6/28/24.
Accession Number: 20240628-5331.
Comment Date: 5 p.m. ET 7/10/24.
Docket Numbers: RP24-868-000.
Applicants: Mountain Valley Pipeline, LLC.
Description: § 4(d) Rate Filing: July 2024 Clean-Up Filing to be effective 8/1/2024.
Filed Date: 7/1/24.
Accession Number: 20240701-5002.
Comment Date: 5 p.m. ET 7/15/24.
Docket Numbers: RP24-869-000.
Applicants: MIGC LLC.
Description: § 4(d) Rate Filing: Annual Fuel Filing to be effective 8/1/2024.
Filed Date: 7/1/24.
Accession Number: 20240701-5080.
Comment Date: 5 p.m. ET 7/15/24.
Docket Numbers: RP24-870-000.
Applicants: Crossroads Pipeline Company.
Description: § 4(d) Rate Filing: Penalty Revenue Crediting Report—Change in Tariff to be effective 8/1/2024.
Filed Date: 7/1/24.
Accession Number: 20240701-5110.
Comment Date: 5 p.m. ET 7/15/24.
Docket Numbers: RP24-871-000.
Applicants: Portland Natural Gas Transmission System.
Description: § 4(d) Rate Filing: Castleton Negotiated Rate Agreement #299643 to be effective 7/1/2024.
Filed Date: 7/1/24.
Accession Number: 20240701-5120.
Comment Date: 5 p.m. ET 7/15/24.
Docket Numbers: RP24-872-000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Amendment to Neg Rate Agmt (Calyx 51780) to be effective 7/1/2024.

Filed Date: 7/1/24.
Accession Number: 20240701-5133.
Comment Date: 5 p.m. ET 7/15/24.
Docket Numbers: RP24-873-000.
Applicants: Mountain Valley Pipeline, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Capacity Releases—7/1/2024 to be effective 7/1/2024.
Filed Date: 7/1/24.
Accession Number: 20240701-5138.
Comment Date: 5 p.m. ET 7/15/24.
Docket Numbers: RP24-874-000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (TMV July–Sept 2024) to be effective 7/1/2024.
Filed Date: 7/1/24.
Accession Number: 20240701-5172.
Comment Date: 5 p.m. ET 7/15/24.
Docket Numbers: RP24-875-000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Calyx 51780 to BP 57121) to be effective 7/1/2024.
Filed Date: 7/1/24.
Accession Number: 20240701-5176.
Comment Date: 5 p.m. ET 7/15/24.
Docket Numbers: RP24-876-000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing (Chevron) to be effective 7/1/2024.
Filed Date: 7/1/24.
Accession Number: 20240701-5178.
Comment Date: 5 p.m. ET 7/15/24.
Docket Numbers: RP24-877-000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements 7-1-2024 to be effective 7/1/2024.
Filed Date: 7/1/24.
Accession Number: 20240701-5189.
Comment Date: 5 p.m. ET 7/15/24.
Docket Numbers: RP24-878-000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: GT&C Section 43—SMG—Operational Conditions to be effective 8/1/2024.
Filed Date: 7/1/24.
Accession Number: 20240701-5203.
Comment Date: 5 p.m. ET 7/15/24.
Docket Numbers: RP24-879-000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—NJR eff 7-1-24 to be effective 7/1/2024.
Filed Date: 7/1/24.
Accession Number: 20240701-5208.
Comment Date: 5 p.m. ET 7/15/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP22–1001–000.

Applicants: Eastern Gas Transmission and Storage, Inc.

Description: Report Filing: EGTS—Operational Gas Sales Report—2024 to be effective N/A.

Filed Date: 6/27/24.

Accession Number: 20240627–5029.

Comment Date: 5 p.m. ET 7/9/24.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

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Dated: July 1, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–14950 Filed 7–8–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–12056–01–OW]

Notice of Public Environmental Financial Advisory Board Webinar

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public webinar.

SUMMARY: The United States Environmental Protection Agency (EPA) announces a public webinar of the Environmental Financial Advisory Board (EFAB). The purpose of the webinar will be for the EFAB to support the Greenhouse Gas Reduction Fund (GGRF) charge workgroup. This webinar will address mobilizing private capital across a single GGRF priority sector, Net Zero Buildings, providing concrete examples of deals and transactions that have been successful. Written public comments may be provided in advance. No oral public comments will be accepted during the webinar. Please see the **SUPPLEMENTARY INFORMATION** section for further details.

DATES: The webinar will be held on July 30, 2024, from 2 p.m. to 3:30 p.m. Eastern Time.

ADDRESSES: The webinar will be conducted in a virtual format via webcast only. Information to access the webinar will be provided upon registration in advance.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants information about the webinar may contact Tara Johnson via telephone/voicemail at (202) 564–6186 or email to efab@epa.gov. General information concerning the EFAB is available at <https://www.epa.gov/waterfinancecenter/efab>.

SUPPLEMENTARY INFORMATION:

Background: The EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, to provide advice and recommendations to the EPA on innovative approaches to funding environmental programs, projects, and activities. Administrative support for the EFAB is provided by the Water Infrastructure and Resiliency Finance Center within the EPA's Office of Water. Pursuant to FACA and EPA policy, notice is hereby given that the EFAB will hold a public webinar for the following purpose: Provide workgroup updates and work products for the Board's GGRF charge.

Registration for the Webinar: To register for the webinar, please visit <https://www.epa.gov/waterfinancecenter/efab#meeting>. Interested persons

who wish to attend the webinar must register by July 29, 2024. Pre-registration is strongly encouraged.

Availability of Webinar Materials: Webinar materials, including the agenda and associated materials, will be available on the EPA's website at <https://www.epa.gov/waterfinancecenter/efab>.

Procedures for Providing Public Input: Public comment for consideration by the EPA's Federal advisory committees has a different purpose from public comment provided to the EPA program offices. Therefore, the process for submitting comments to a Federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees provide independent advice to the EPA. Members of the public may submit comments on matters being considered by the EFAB for consideration as the Board develops its advice and recommendations to the EPA.

Written Statements: Written statements should be received by July 25, 2024, so that the information can be made available to the EFAB for its consideration prior to the webinar. Written statements should be sent via email to efab@epa.gov. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the EFAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities or to request accommodations for a disability, please register for the webinar and list any special requirements or accommodations needed on the registration form at least 10 business days prior to the webinar to allow as much time as possible to process your request.

Andrew D. Sawyers,
*Director, Office of Wastewater Management,
Office of Water.*

[FR Doc. 2024–14821 Filed 7–8–24; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Board of Directors Meeting

SUMMARY: Notice of the forthcoming regular meeting of the Board of Directors of the Farm Credit System Insurance Corporation (FCSIC), is hereby given in accordance with the provisions of the Bylaws of the FCSIC.

DATES: 10 a.m., Wednesday, July 10, 2024.

ADDRESSES: You may observe the open portions of this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually. If you would like to virtually attend, at least 24 hours in advance, visit *FCSIC.gov*, select “News & Events,” then select “Board Meetings.” From there, access the linked “Instructions for board meeting visitors” and complete the described registration process.

FOR FURTHER INFORMATION CONTACT: If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

SUPPLEMENTARY INFORMATION: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public. The following matters will be considered:

Portions Open to the Public

- Approval of Minutes for April 10, 2024
- Quarterly FCSIC Financial Reports
- Quarterly Report on Insured Obligations
- Quarterly Report on Annual Performance Plan
- Mid-Year Review of Insurance Premium Rates

Portions Closed to the Public

- Quarterly Report on Insurance Risk

Ashley Waldron,
Secretary to the Board.

[FR Doc. 2024–14822 Filed 7–8–24; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 230207]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a modified system of records.

SUMMARY: The Federal Communications Commission (FCC, Commission, or Agency) has modified an existing system of records, FCC/OLA–1, Legislative Management Tracking System (LMTS), subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the *Federal Register* notice of the existence and character of records maintained by

the agency. The FCC’s Office of Legislative Affairs (OLA) uses this system to maintain the personally identifiable information (PII) contained in the Commission’s Legislative Management Tracking System (LMTS).

DATES: This modified system of records will become effective on July 9, 2024. Written comments on the routine uses are due by August 8, 2024. The routine uses in this action will become effective on August 8, 2024 unless comments are received that require a contrary determination.

ADDRESSES: Send comments to Brendan McTaggart, Attorney-Advisor, Office of General Counsel, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, or to *privacy@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Brendan McTaggart, (202) 418–1738, or *privacy@fcc.gov*.

SUPPLEMENTARY INFORMATION: This notice serves to update and modify FCC/OLA–1 as a result of the various necessary changes and updates. The substantive changes and modifications to the previously published version of the FCC/OLA–1 system of records include:

1. Adding five new routine uses: (1) Litigation; (2) Adjudication; (3) Law Enforcement and Investigation; (8) Assistance to Federal Agencies and Entities Related to Breaches, the addition of which is required by OMB M–17–12; and (9) Nonfederal Personnel.
2. Updating and/or revising language in three routine uses (listed by the routine use number provided in this notice): (4) Government-wide Program Management and Oversight; (5) Congressional Inquiries; and (7) Breach Notification, the modification of which is required by OMB M–17–12.

The system of records is also updated to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage, retention, disposal and retrieval of the information; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

SYSTEM NAME AND NUMBER:

FCC/OLA–1, Legislative Management Tracking System (LMTS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

OLA, FCC, 45 L St. NE, Washington, DC 20554.

SYSTEM MANAGER(S):

OLA, FCC, 45 L St. NE, Washington, DC 20554.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 47 U.S.C. 154(i), (j), and (k), and 47 U.S.C. 155(a).

PURPOSE(S) OF THE SYSTEM:

OLA uses the LMTS to store, track, and manage correspondence to or from the members of the U.S. House of Representatives, the U.S. Senate, and the Vice President and President of the United States. This correspondence may include attachments that could contain PII from individuals (members of the public at large) who contacted their Congressional Representative(s), Senator(s), and/or the Vice President or President concerning various telecommunications issues affecting them, e.g., telephone and cable bills, etc. In addition, LMTS tracks correspondence regarding FCC employees who have requested Congressional assistance with their personal employment issues at the Commission, e.g., hiring and promotion matters, etc.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals in the Legislative Management Tracking System (LMTS) include members of the U.S. House of Representatives, Senators, and the Vice President and President of the United States; members of the public at large; and FCC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the LMTS may include:

1. Members of the public at large: individual’s name, home address, home telephone number(s), personal cell phone number(s), account number(s) for telephone, cell phone, cable television, and satellite television services, and other, miscellaneous information that an individual may include in his/her Congressional (constituent) complaint(s) and/or consumer complaints, etc.; and
2. FCC employees: individual’s name, home address, home telephone number(s), personal cell phone number(s), FCC employment records, and other miscellaneous, information that a Commission employee may include in a complaint or request.

RECORD SOURCE CATEGORIES:

The sources for the information in the LMTS are Congressional and Executive Branch correspondence, including attachments, which may include complaints related to telephone, wireless, and cable billing or service;

licensing inquiries; or other inquiries on issues under FCC jurisdiction, etc., submitted by constituents (members of the public at large); or personnel actions or complaints from constituents who are FCC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about individuals in this system of records may routinely be disclosed under the following conditions:

1. Litigation—Records may be disclosed to the Department of Justice (DOJ) when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which the FCC collected the records.

2. Adjudication—Records may be disclosed in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

3. Law Enforcement and Investigation—When the FCC investigates any violation or potential violation of a civil or criminal law, regulation, policy, executed consent decree, order, or any other type of compulsory obligation and determines that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law, regulation, policy, consent decree, order, or other compulsory obligation, the FCC may disclose pertinent information as it deems necessary to the target of an investigation, as well as with the appropriate Federal, State, local, Tribal, international, or multinational agencies, or a component of such an agency, responsible for investigating,

prosecuting, enforcing, or implementing a statute, rule, regulation, or order.

4. Government-wide Program Management and Oversight—Information may be disclosed to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

5. Congressional Inquiries—Information may be provided to a Congressional office in response to an inquiry from that Congressional office made at the written request of the individual to whom the information pertains.

6. Executive Branch Inquiries—Records may be shared with other Federal agencies, including the White House and OMB, to assist individuals whose information is contained in this system.

7. Breach Notification—Records may be disclosed to appropriate agencies, entities, and persons when: (a) The Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

8. Assistance to Federal Agencies and Entities Related to Breaches—Records may be disclosed to another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

9. Non-Federal Personnel—Information may be disclosed to non-Federal personnel, including contractors, other vendors (e.g., identity verification services), grantees, and volunteers who have been engaged to assist the FCC in the performance of a

service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records in this system reside on the FCC or a vendor's network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information in the LMTS is retrieved by the correspondence log-in file number, Congressional Representative's name, and/or type of complaint, etc. Regardless of the circumstances, OLA always redacts the Social Security Number and birthdate before entering a document into LMTS. Other personally identifiable information (PII) in an attachment may also be redacted prior to filing the correspondence if it is not relevant to the complaint or inquiry.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The information in this system is maintained and disposed of in accordance with the National Archives and Records Administration (NARA) Records Schedules N1-173-92-002, Office of Legislative Affairs Records, and N1-173-96-001, Office of Legislative and Intergovernmental Affairs Records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records, files, and data are stored within FCC or a vendor's accreditation boundaries and maintained in a database housed in the FCC's or vendor's computer network databases. Access to the electronic files is restricted to authorized employees and contractors; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other employees and contractors may be granted access on a need-to-know basis. The electronic files and records are protected by the FCC and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), the Office of Management and Budget (OMB), and the National Institute of Standards and Technology (NIST).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about

themselves should follow the Notification Procedures below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest information pertaining to him or her in the system of records should follow the Notification Procedures below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing to privacy@fcc.gov. Individuals requesting record access or amendment must also comply with the FCC's Privacy Act regulations regarding verification of identity as required under 47 CFR part 0, subpart E.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

76 FR 23811 (April 28, 2011).

Federal Communications Commission.

Aleta Bowers,

Information Management Specialist, Office of the Secretary.

[FR Doc. 2024–15057 Filed 7–8–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1058; FR ID 230644]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of

information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before September 9, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1058.

Title: FCC Application or Notification for Spectrum Leasing Arrangement or Private Commons Arrangement: WTB and PSHS Bureaus.

Form Number: FCC Form 608.

Type of Review: Revision of a currently approved information collection.

Respondents: Individual and households; Businesses or other for-profit entities; State, local, or Tribal government, and Not for profit institutions.

Number of Respondents: 1,697 respondents; 1,697 responses.

Estimated Time per Response: 0.05 hours–3 hours.

Frequency of Response: Recordkeeping requirement, third party disclosure requirement, on occasion reporting requirement, one-time reporting requirement and periodic reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 1, 4(i), 157, 301, 303, 307, 308, 309, and 310 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,878 hours.

Total Annual Cost: \$1,763,375.

Needs and Uses: FCC Form 608 is a multi-purpose form. It is used to provide notification or request approval for any spectrum leasing arrangement ("Lease") entered into between an existing licensee in certain Wireless

and/or Public Safety Radio Services and a spectrum lessee. This form also is required to notify or request approval for any spectrum subleasing arrangement ("Sublease"). The data collected on the form is used by the FCC to determine whether the public interest would be served by the Lease or Sublease. The form is also used to provide notification for any Private Commons Arrangement entered into between a licensee, lessee, or sublessee and a class of third-party users (as defined in Section 1.9080 of the Commission's Rules).

The Commission is revising this form to collect information in order to confirm that satellite service operators and terrestrial service providers who seek to enter lease agreements in order to offer supplemental coverage from space (SCS) do so in compliance with the rules that govern SCS operations. On March 15, 2024, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking* in GN Docket No. 23–65 and IB Docket No. 22–271, FCC 24–28, which adds new section 1.9047(d)(2) to the Commission's rules requiring the spectrum lessee or sublessee seeking to engage in spectrum leasing under this section to provide certain information within the Commission Form 608 when seeking a leasing agreement to provide SCS. Applicants will file Form 608 into the Commission's Universal Licensing System (ULS) database.

The Commission anticipates that SCS will enable consumers in areas not covered by terrestrial networks to be connected using their existing devices via satellite-based communications. SCS is a crucial component of the Commission's vision for a "single network future," in which satellite and terrestrial networks work seamlessly together to provide coverage that neither network can achieve on its own. In order to ensure that prospective SCS operators will be able to comply with the applicable rules, that the public interest will be served by granting their applications, and that harmful interference will be avoided to the greatest extent possible thereafter, the Commission seeks approval to collect the following information from prospective SCS spectrum lessees.

The Commission has adopted new requirements in its part 1 rules that obligate lessees to provide the following on FCC Form 608: a certification that they are entering a leasing agreement in order to provide SCS; a description of the type of permitted arrangement the parties will enter (*e.g.*, is there a single terrestrial licensee or multiple terrestrial licensees that together hold the required

licenses); and, if there are multiple terrestrial licensees, a further description of the leasing arrangement and explanation of how those licensees together hold all of the relevant licenses in a particular geographically dependent area (GIA). Entities completing FCC Form 608 for the purposes of providing SCS must also indicate that the application is for SCS by checking a box on Form 608.

This information collection is designed to allow Commission staff to carry out its statutory duties to regulate satellite communications in the public interest; namely, to ensure that prospective providers of SCS will operate in compliance with the applicable regulatory framework. This process utilizes an existing Commission form, which will remove confusion by employing the procedures that are already in place. The modifications for Form 608 covered herein will enable the Commission to more accurately track filings related to the provision of SCS, a critical component of application review given the interplay between part 1 lease filings and part 25 license applications inherent in the SCS framework. This is especially crucial where multiple entities together hold all co-channel licenses in a particular band throughout a geographically independent area (GIA) and wish to deploy a leasing agreement with a satellite operator to provide SCS. Such arrangements are only permitted in the circumstances described in section 1.9047(d)(1)(ii)(A)–(B); specifically, the Commission must be able to confirm that the multiple licensees in fact cover the entirety of the GIA in question and that, when reviewing related part 25 license applications, the entire area of the proposed service is covered by the associated leases. This collection will thereby enable the Commission to monitor and enforce the entry criteria that SCS providers must satisfy, and which are designed to minimize the possibility of harmful interference. Finally, the collection will play a critical role in the Commission's effort to review and track leasing arrangements that will result in entities providing SCS.

Federal Communications Commission.

Aleta Bowers,

Information Management Specialist, Office of the Secretary.

[FR Doc. 2024–15060 Filed 7–8–24; 8:45 am]

BILLING CODE 6712–01–P

GOVERNMENT ACCOUNTABILITY OFFICE

Notice of Estimated Lump Sum Catch-Up Payments to Eligible 1983 Beirut Barracks Bombing Victims and 1996 Khobar Towers Bombing Victims and Planned Methodology; Request for Comment

AGENCY: U.S. Government Accountability Office (GAO).

ACTION: Notice of estimated lump sum catch-up payments and planned methodology; request for comment.

SUMMARY: GAO is now accepting comments on proposed lump sum catch-up payments to certain 1983 Beirut barracks bombing victims and certain 1996 Khobar Towers bombing victims who have submitted eligible applications for payment to the United States Victims of State Sponsored Terrorism Fund. GAO is publishing this notice pursuant to the requirements of the Fairness for 9/11 Families Act. Comments should be sent to the email address below.

DATES: Interested persons are invited to submit comments on or before August 8, 2024.

ADDRESSES: Submit comments to FundPaymentComments@gao.gov or by U.S. mail to Ms. Triana McNeil at 441 G Street NW, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: David Lutter, at 202–512–7500 or LutterD@gao.gov, if you need additional information. For general information, contact GAO's Office of Public Affairs, 202–512–4800.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 101 of the Fairness for 9/11 Families Act (Fairness Act), GAO is conducting a review and publishing a notice of proposed lump sum catch-up payments to certain 1983 Beirut barracks bombing victims¹ and certain 1996 Khobar Towers bombing victims² who have submitted eligible

¹ For the purposes of this analysis and consistent with the Fairness Act, “1983 Beirut barracks bombing victim” means “a plaintiff, or estate or successor in interest thereof, who has an eligible claim [to the Fund] that arises out of the October 23, 1983, bombing of the United States Marine Corps barracks in Beirut, Lebanon; and includes a plaintiff, estate, or successor in interest [] who is a judgment creditor [in] *Peterson v. Islamic Republic of Iran* [] or a Settling Judgment Creditor as identified in the order dated May 27, 2014, [in] *In Re 650 Fifth Avenue & Related Properties*.” 34 U.S.C. 20144(j)(15).

² The term “1996 Khobar Towers bombing victim” means “a plaintiff, or estate or successor in interest thereof, who has an eligible claim [to the Fund] that arises out of the June 25, 1996 bombing of the Khobar Tower housing complex in Saudi

applications to the United States Victims of State Sponsored Terrorism Fund (Fund), on or after December 29, 2022, and by June 27, 2023.”³ On December 28, 2023, GAO published a notice (88 FR 89693) of our methodology for estimating certain lump sum catch-up payments. In this notice, we are providing a summary of comments and our responses to comments on the December notice, our revised proposed methodology, and the estimated amount needed to provide lump sum catch-up payments to certain 1983 Beirut barracks bombing victims and certain 1996 Khobar Towers bombing victims who have submitted eligible applications for payment to the Fund, and we are accepting comments on updates to our planned methodology.

The Fund, which is administered by a Special Master and supported by Department of Justice (DOJ) personnel,⁴ was established in 2015 by the Justice for United States Victims of State Sponsored Terrorism Act (Victims Act).⁵ For purposes of the Fund, the term “claim” generally refers to a claim based on compensatory damages awarded to a United States person in a qualifying final judgment.⁶ These judgments are issued by a United States district court under state or federal law against a foreign state that was designated as a state sponsor of terrorism at the time certain acts of international terrorism occurred or was so designated as a result of such acts,

Arabia; and includes a plaintiff, estate, or successor in interest [] who is a judgment creditor [in] *Peterson v. Islamic Republic of Iran* [] or a Settling Judgment Creditor as identified in the order dated May 27, 2014, [in] *In Re 650 Fifth Avenue & Related Properties*.” 34 U.S.C. 20144(j)(16).

³ Public Law 117–328, div. MM, sec. 101(b)(3)(B)(iii), 136 Stat. 4459, 6108–6109 (pertinent portion codified at 34 U.S.C. 20144(d)(4)(D)). Section 101 directs us to estimate catch-up payments for those who submitted eligible applications to the Fund between the date of enactment (Dec. 29, 2022), and June 27, 2023, which is the date by which claimants must have applied to the Fund to be considered for catch-up payments. We refer to this time frame, Dec. 29, 2022 through June 27, 2023, as the “statutory application time frame” throughout the remainder of this notice. In general, the deadline for submitting a claim to the Fund is not later than 90 days after obtaining a final judgment. However, the Fairness Act established a new application period for all 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims awarded final judgments before Dec. 29, 2022, providing that these victims had 180 days from the date of enactment of the Fairness Act (June 27, 2023) to submit an application for payment to the Fund. Public Law 117–328, 136 Stat. at 6106–6107 (pertinent portion codified at 34 U.S.C. 20144(c)(3)(A)(ii)).

⁴ See 34 U.S.C. 20144(b)(1).

⁵ Public Law 114–113, div. O, tit. IV, sec. 404, 129 Stat. 2242, 3007–3017 (codified as amended at 34 U.S.C. 20144).

⁶ 34 U.S.C. 20144(c)(2).

and arising from acts of international terrorism.⁷ In general, a claim is determined eligible for payment from the Fund if the Special Master determines that the judgment holder (referred to as a “claimant”) is a United States person, that the claim at issue meets the definition of claim above, and that the application for payment was submitted timely.⁸ As of January 2023, the Fund has allocated to eligible claimants approximately \$3.4 billion in four payment rounds, which were distributed in 2017, 2019, 2020, and 2023. Claimants in these four payment rounds included 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims.⁹

Additionally, at the time the Fund was established, the law allowed plaintiffs in two identified lawsuits, *Peterson v. Islamic Republic of Iran* (*Peterson*) and *In Re 650 Fifth Avenue and Related Properties*¹⁰ to elect to participate in the Fund and irrevocably assign all rights, title, and interest in the actions for the purposes of participating in the Fund.¹¹ Plaintiffs in these actions who did not elect to participate in the Fund were also permitted to submit an application for conditional payment from the Fund in which payment amounts would be determined and set aside, pending a final determination in these actions.¹² In the event that a final judgment was entered in favor of the plaintiffs in the *Peterson* action and funds were distributed, the payments allocated to claimants who applied for a conditional payment were to be considered void, and any funds

previously allocated to such conditional payments be made available and distributed to all other eligible claimants.¹³ A final judgment in favor of plaintiffs in *Peterson* was entered, appealed to the United States Court of Appeals for the Second Circuit, and ultimately affirmed by the United States Supreme Court on April 20, 2016.¹⁴ Distributions to the judgment creditor plaintiffs in *Peterson* commenced on October 19, 2016.¹⁵ Accordingly, conditional claimants who were judgment creditors in *Peterson* did not receive award payments from the Fund, and the Fund did not include them in award calculations in 2017 for the first round of payments or subsequent payment rounds.¹⁶

The Victims Act outlines minimum payments requirements in which any applicant with an eligible claim who has received, or is entitled or scheduled to receive, any payment that is equal to, or in excess of, 30 percent of the total compensatory damages owed on the applicant’s claim from any source other than the Fund¹⁷ shall not receive any payment from the Fund until all other eligible applicants generally have received from the Fund an amount equal to 30 percent of the compensatory damages awarded to those applicants pursuant to their final judgments (referred to as the “30 percent rule”).¹⁸ The Fairness Act amended the Victims Act to provide that the minimum

payments requirements include the total amount received by applicants who are 1983 Beirut barracks bombing victims or 1996 Khobar Towers bombing victims as a result of or in connection with *Peterson* or *In Re 650 Fifth Avenue and Related Properties*. It further provides that any such applicant who has received or is entitled or scheduled to receive 30 percent or more of such applicant’s compensatory damages judgment as a result of or in connection with such proceedings shall not receive any payment from the Fund, except as consistent with minimum payments requirements or as part of a lump sum catch-up payment under section 101 of the Fairness Act.¹⁹

Section 101 of the Fairness Act contains a provision for GAO to conduct an audit and publish a notice of proposed lump sum catch-up payments for 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims who submitted eligible applications to the Fund during the statutory application time frame (December 29, 2022, and by June 27, 2023).²⁰ This section also established a lump sum catch-up payment reserve fund within the Fund and appropriated \$3 billion to this reserve fund.²¹

We published our initial planned methodology for comment on December 28, 2023 (88 FR 89693). We are now publishing for comment our updated planned methodology for estimating lump sum catch-up payments pursuant to section 101 of the Fairness Act for eligible 1983 Beirut barracks bombing victims and 1996 Khobar Towers

⁷ 34 U.S.C. 20144(c)(2).

⁸ 34 U.S.C. 20144(c)(1). All decisions made by the Special Master with regard to compensation from the Fund are final and generally not subject to administrative or judicial review. See 34 U.S.C. 20144(b)(3). A claimant whose claim is denied in whole or in part by the Special Master may request a hearing before the Special Master not later than 30 days after receipt of a written decision. Id. 20144(b)(4)(A). Not later than 90 days after any such hearing, the Special Master must issue a final written decision affirming or amending the original decision, and that written decision is final and nonreviewable. Id. 20144(b)(4)(B).

⁹ According to Fund data, 12 1983 Beirut barracks bombing victims or 1996 Khobar Towers bombing victims were eligible for Fund payment for the first time in round 1, 141 in round 2, 423 in round 3, and 708 in round 4. Claimants continue to receive payment in future rounds, so the numbers of claimants receiving payment in rounds two, three, and four are cumulative.

¹⁰ *Peterson v. Islamic Republic of Iran*, No. 10 Civ. 4518 (S.D.N.Y.) and *In Re 650 Fifth Avenue and Related Properties*, No. 08 Civ. 10934 (S.D.N.Y. filed Dec. 17, 2008).

¹¹ Public Law 114–113, 129 Stat. at 3013 (pertinent portion codified at 34 U.S.C. 20144(e)(2)(B)(iii)).

¹² Public Law 114–113, 129 Stat. at 3013–3014 (pertinent portion codified at 34 U.S.C. 20144(e)(2)(B)(iv)).

¹³ Public Law 114–113, 129 Stat. at 3014 (pertinent portion codified at 34 U.S.C. 20144(e)(2)(B)(iv)(II)(bb)).

¹⁴ See *Bank Markazi aka Central Bank of Iran v. Peterson*, 578 U.S. 212 (2016); U.S. Victims of State Sponsored Terrorism Fund, “Supplemental Report from the Special Master,” at 6 (August 2017).

¹⁵ U.S. Victims of State Sponsored Terrorism Fund, “Supplemental Report from the Special Master,” at 6 (August 2017).

¹⁶ Id. There were 78 conditional claimants who were *Peterson* judgment creditors. Id.

¹⁷ The statute requires that as part of the procedures to apply and establish eligibility for payment, the Special Master must require applicants to provide the Special Master with information regarding compensation from any source other than this Fund that the claimant (or, in the case of a personal representative, the victim’s beneficiaries) has received or is entitled or scheduled to receive as a result of the act of international terrorism that gave rise to a claimant’s final judgment, including information identifying the amount, nature, and source of such compensation. Public Law 114–113, 129 Stat. at 3008 (pertinent portion codified at 34 U.S.C. 20144(b)(2)(B)). Those procedures require applicants to provide information and documentation regarding the amount, nature, and source of any payment they received or are entitled or scheduled to receive, and state that applicants must update that information throughout the period of the Fund. “Justice for United States Victims of State Sponsored Terrorism Act,” 81 FR 45535, 45538 (July 14, 2016).

¹⁸ Public Law 114–113, 129 Stat. at 3011 (pertinent portion codified at 34 U.S.C. 20144(d)(3)(B)(i)).

¹⁹ Public Law 117–328, 136 Stat. at 6107 (pertinent portion codified at 34 U.S.C. 20144(d)(3)(B)(iii)).

²⁰ Public Law 117–328, 136 Stat. at 6108 (pertinent portion codified at 34 U.S.C. 20144(d)(4)(D)(i)). As discussed in footnote 3, section 101 directs us to estimate lump sum catch-up payments for those who submitted eligible applications to the Fund between the date of enactment (Dec. 29, 2022) and June 27, 2023, which is the date the application period closed for catch-up payments. See Public Law 117–328, 136 Stat. at 6106–6107 (pertinent portion codified at 34 U.S.C. 20144(c)(3)(A)(ii)). GAO’s methodology for the estimation of lump sum catch-up payments is only for the purposes of carrying out the provisions directed to the Comptroller General under the Fairness Act.

²¹ Public Law 117–328, 136 Stat. at 6108–6109 (pertinent portion codified at 34 U.S.C. 20144(d)(4)(D)(iv)). Additionally, not earlier than 90 days and not later than 1 year after submission of the report that is to follow this notice, the Special Master is to authorize lump sum catch-up payments from the reserve fund in amounts equal to those estimated by GAO. 34 U.S.C. 20144(d)(4)(D)(iv)(II). Not later than 1 year after the Special Master disburses all lump sum catch-up payments from the reserve fund the reserve fund is to terminate; all amounts remaining in the reserve fund in excess of proposed lump sum catch-up payments shall be deposited into the Fund. 34 U.S.C. 20144(d)(4)(D)(iv)(IV).

bombing victims in “amounts that, after receiving the lump sum catch-up payments, would result in the percentage of the claims of such victims received from the Fund being equal to the percentage of the claims of non-9/11 victims of state sponsored terrorism received from the Fund, as of December 29, 2022.”²² The language used in section 101 to describe the percentage resulting from the receipt of lump sum catch-up payments for 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims is equivalent to the language in the Sudan Claims Resolution Act, which directed us to estimate lump sum catch-up payments to 9/11 victims, spouses, and dependents.²³ Section 101 further provides for GAO to conduct this audit in accordance with 34 U.S.C. 20144(d)(3)(A), which requires that distributions be made “on a pro rata basis, based on the amounts outstanding and unpaid on eligible claims, until such amounts have been paid in full or the Fund is closed.”²⁴ Additionally, 34 U.S.C. 20144(d)(3)(A) places limits on the amount of eligible claims (referred

to as “individual and family statutory caps”).²⁵

Summary of Comments

GAO received a total of 319 comments by the closing date of January 29, 2024. GAO received 310 comments from individuals and 9 comments from law firms representing victims of state-sponsored terrorism.²⁶ GAO received 316 comments by email; the remaining 3 comments were received in voicemails or letters. In general, comments from individuals were from 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims, 9/11 victims and their family members, and Members of Congress;²⁷ and comments from law firms were from attorneys representing 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims.

GAO has carefully considered all comments received. Below is a summary of the types of comments GAO received and GAO’s responses.²⁸

Equity Issues Related to U.S. Victims of State Sponsored Terrorism Fund and Lump Sum Catch-Up Payments

Some comments expressed concern with certain groups of victims within the Fund being prioritized and stated that all victims should be treated equally and fairly. Some commenters also stated that since 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims were never excluded from the Fund, they should not receive catch-up payments.

GAO Response: Section 101 of the Fairness Act includes a provision for GAO to conduct an audit and publish a notice of proposed lump sum catch-up payments for 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims who submitted eligible applications to the Fund during the statutory application time frame. As

such, GAO is carrying out the processes directed by that provision and is not otherwise taking a position with respect to who should receive lump sum catch-up payments.

Eligibility Criteria for a Lump Sum Catch-Up Payment

GAO received comments regarding the eligibility criteria for a lump sum catch-up payment. Many of the comments on this topic related to the timing of applications to the Fund by 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims. Specifically, commenters raised issues related to prior applicants to the Fund who either withdrew their prior applications or were already deemed eligible claimants by the Fund, and reapplied within the statutory application time frame. One group of commenters stated that applicants who withdrew prior applications and subsequently reapplied to the Fund within the statutory application time frame should be considered ineligible for a lump sum catch-up payment, describing them as “late filers.” A second group of commenters who submitted a comment letter stated that claimants who applied to the Fund previously, as conditional claimants or otherwise, and then subsequently applied to the Fund within the statutory application time frame should be eligible for a lump sum catch-up payment. These commenters stated that section 101 of the Fairness Act does not prohibit successive applications or further define the term “application” in a way that would disqualify claimants who previously applied to the Fund and then applied subsequently within the statutory application time frame. Some commenters also raised concerns that the Fund had administratively closed claimants’ applications, or did not permit claimants to apply under the Fund’s procedures.²⁹

²⁹ According to Fund officials, the Fund administratively closed applications submitted by claimants previously found eligible because it cannot and does not accept successive or duplicate applications. See “Justice for United States Victims of State Sponsored Terrorism Act,” 81 FR 45535, 45537 (July 14, 2016) (stating that “[o]nly one application may be submitted for each claim”). On Feb. 7, 2023, during the statutory application time frame, the Fund updated the frequently asked questions section of its website, adding language that 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims “who are not eligible for lump sum catch-up payments under the Fairness Act, such as USVSST Fund claimants previously found eligible, may still be eligible for compensation in the USVSST Fund’s other statutory distributions.” U.S. Victims of State Sponsored Terrorism Fund, *Frequently Asked Questions*, <https://www.usvsst.com/Home/Faq> (last accessed June 25, 2024) (Frequently Asked Question (FAQ) 7.3 Which 1983 Beirut barracks

²² 34 U.S.C. 20144(d)(4)(D)(i). The Fairness Act required GAO, by Dec. 28, 2023, to conduct an audit and publish a notice in the **Federal Register**. The act further required GAO to provide a 30-day period for public comment and to submit a report to congressional committees and the Special Master not later than 30 days after the expiration of the comment period. Id. 20144(d)(4)(D)(ii)–(iii). We acknowledge that we did not meet the date identified in the statute for submitting a report to congressional committees and the Special Master. We also acknowledge that the Fairness Act does not contain a provision for GAO to publish a second **Federal Register** notice on this topic. We believe that we need to issue this notice to ensure an accurate and transparent methodology for claimants to receive the correct amounts of lump sum catch-up payments. In response to the first **Federal Register** notice, we received numerous comments that raised disparate and considered views, and it is critical that we fully consider and address them. In addition, this second notice considers certain claimant data that were not available in December 2023 when we issued the first notice to meet the date required by the Fairness Act.

²³ See Public Law 116–260, div. FF, tit. XVII, sec. 1705(b)(2), 134 Stat. 1182, 3293–3294 (pertinent portion codified at 34 U.S.C. 20144(d)(4)(C)(i) (“[T]he Comptroller General of the United States shall conduct an audit and publish in the **Federal Register** a notice of proposed lump sum catch-up payments to 9/11 victims, 9/11 spouses, and 9/11 dependents who have submitted applications in accordance with subparagraph (B) in amounts that, after receiving the lump sum catch-up payments, would result in the percentage of the claims of 9/11 victims, 9/11 spouses, and 9/11 dependents received from the Fund being equal to the percentage of the claims of 9/11 family members received from the Fund, as of December 27, 2020.”)).

²⁴ See 34 U.S.C. 20144(d)(3)(A)(i) (requiring the division of funds on a pro rata basis, subject to minimum payments provisions in 34 U.S.C. 20144(d)(3)(B) and limitations in 34 U.S.C. 20144(d)(3)(A)(ii)).

²⁵ 34 U.S.C. 20144(d)(3)(A)(ii). For example, for individuals, the cap is \$20,000,000 and for claims of non-9/11 family members when aggregated, the cap is \$35,000,000.

²⁶ GAO counted comments received multiple times with the same content and sender as one comment.

²⁷ We received a comment letter signed by three Members of Congress. According to the comment letter, they are members of the United States Senate who worked on the Fairness Act and on S. 5156, the Fairness for American Victims of State-Sponsored Terrorism Act (which later became the catch-up payment provision in the Fairness Act). The Members of Congress provided comments stating their views that all eligible claimants should be referred to GAO from the Special Master, GAO should use the Fund’s payment percentage for purposes of lump sum catch-up payments, and GAO should exclude offsets from claimants’ net eligible claims.

²⁸ Some comments fell into multiple categories and are included in all applicable categories.

GAO Response: GAO's view is that the provision for lump sum catch-up payments in section 101 of the Fairness Act does not disqualify claimants who previously applied to the Fund and then subsequently applied within the statutory application time frame.³⁰ The Comptroller General's mandate to determine amounts of lump sum catch-up payments does not state that successive applications cannot be submitted for lump sum catch-up payments, and we do not read such a prohibition in the related provision regarding the deadline for application submission.³¹ Accordingly, we are updating our methodology to include all eligible 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims who submitted an application to the Fund within the statutory application time frame, including those who submitted successive applications to the Fund.³²

bombing victims and 1996 Khobar Towers bombing victims are included in the Fairness Act's lump sum catch-up payment provision and how do these victims file a claim with the USVSST Fund?). Further, on July 28, 2023, the Fund updated FAQ 7.1 What are lump sum catch-up payments? and FAQ 7.3 to add language stating that "[e]ach claimant has one claim before the USVSST Fund for all compensation, including lump sum catch-up payments. The USVSST Fund cannot accept duplicative filings." According to Fund officials, claimants may have refrained from filing an application after contacting the Fund or reviewing the application procedures based on the advice received from their counsel or the Fund. For good cause shown, the Special Master may grant a claimant a reasonable extension of the section 20144(c)(3)(A)(ii)(II) deadline. 34 U.S.C. 20144(c)(3)(B) (applying to deadlines under (c)(3), as enacted by the Victims Act, Public Law 114–113, 129 Stat. at 3010).

³⁰ GAO's view is for purposes of implementing the Comptroller General's responsibilities under 34 U.S.C. 20144(d)(4)(D)(i)–(iii) to conduct an audit and calculate amounts for the Special Master to allocate lump sum catch-up payments.

³¹ See 34 U.S.C. 20144(c)(3)(A)(ii)(II); 34 U.S.C. 20144(d)(4)(D)(i) (conditioning eligibility for lump sum catch-up payments on those individuals filing applications for payment between Dec. 29, 2022, and June 27, 2023). Interpreting the statute in this way also aligns with another provision of the Fairness Act, related to litigation involving certain 1983 Beirut barracks bombing victims and 1996 Khobar Towers victims. See Public Law 117–328, 136 Stat. at 6109 (pertinent portion codified at 34 U.S.C. 20144(e)(2)(B)(v) (providing that statutory provisions regarding elections by plaintiffs in *Peterson v. Islamic Republic of Iran and In Re 650 Fifth Avenue and Related Properties* shall not apply with respect to 1983 Beirut barracks bombing victims and 1996 Khobar Towers victims who submit an application during the statutory application time frame)).

³² This includes claimants who, within the statutory application time frame, submitted applications to the Fund, including those who submitted a letter to the Fund expressing the claimants' intent to apply for lump sum catch-up payments, regardless of a previous determination of eligibility by the Fund or administrative closure of their applications. As discussed in further detail below, this comprises 512 claimants (which includes 78 conditional claimants who were *Peterson* judgment creditors).

In accordance with section 101 of the Fairness Act, we will not include claimants who did not have a final judgment awarded as of the date of enactment of the Fairness Act and will not include claimants who did not submit an application to the Fund within the statutory application time frame.³³

Support for GAO's Percentage Calculation Methodology

Comments received expressed support for GAO's percentage calculation methodology as described in our December 28, 2023, notice (88 FR 89693). These commenters noted that the methodology we outlined was the same formula used to calculate the 9/11 lump sum catch-up payments, and also noted that since the relevant statutory language for that calculation and this calculation are identical, they find this approach appropriate. These commenters also generally stated that employing a different formula or methodology would potentially give prioritization or preferential treatment to one group of victims over another.

GAO's Response: We agree that the language used in section 101 of the Fairness Act to describe the percentage that we are to calculate to estimate lump sum catch-up payments for 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims is equivalent to the language in the Sudan Claims Resolution Act, which directed us to estimate lump sum catch-up payments to 9/11 victims, spouses, and dependents.³⁴ Thus, we plan to use the

³³ Section 101 of the Fairness Act requires that applications be submitted on or after Dec. 29, 2022, and by June 27, 2023. In contrast, the Sudan Claims Resolution Act provided 9/11 victims, spouses, and dependents 90 days from the date of enactment to submit an application for a payment. Public Law 116–260, 134 Stat. at 3293–3294 (pertinent portion codified at 34 U.S.C. 20144(d)(4)(C)(i)). Therefore, GAO could calculate lump sum catch-up payments for 9/11 victims, spouses, and dependents who submitted applications to the Fund prior to the date of enactment of the Sudan Claims Resolution Act, while GAO cannot calculate lump sum catch-up payments to 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims unless they have submitted an application during the 180-day period from the date of enactment of the Fairness Act.

³⁴ Compare 34 U.S.C. 20144(d)(4)(D)(i) (“in amounts that, after receiving the lump sum catch-up payments, would result in the percentage of the claims of such victims received from the Fund being equal to the percentage of the claims of non-9/11 victims of state sponsored terrorism received from the Fund, as of December 29, 2022”), with 34 U.S.C. 20144(d)(4)(C)(i) (“in amounts that, after receiving the lump sum catch-up payments, would result in the percentage of the claims of 9/11 victims, 9/11 spouses, and 9/11 dependents received from the Fund being equal to the percentage of the claims of 9/11 family members received from the Fund, as of December 27, 2020.”). The Fairness Act directed the Special Master to

same methodology that we used to calculate “GAO's percentage calculation” for the 9/11 lump sum catch-up payments for this population.

Request To Use the Fund's Payment Percentage

GAO received comments about the use of the Fund's payment percentage for our estimation of lump sum catch-up payments. For example, commenters suggested that GAO add the payment percentages calculated by the Fund in the first through fourth rounds to determine the percentage needed for catch-up payments.³⁵

GAO's Response: Section 101 of the Fairness Act calls for GAO to estimate lump sum catch-up payments “in amounts that, after receiving the lump sum catch-up payments, would result in the percentage of the claims of such victims received from the Fund being equal to the percentage of the claims of non-9/11 victims of state sponsored terrorism received from the Fund, as of December 29, 2022.”³⁶ Consistent with our approach pursuant to equivalent language in the Sudan Claims Resolution Act and outlined in a prior notice (86 FR 31312, June 11, 2021) and report,³⁷ GAO estimated the amount needed to provide lump sum catch-up payments to 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims who submitted

authorize lump sum catch-up payments to 9/11 victims, spouses, and dependents in amounts equal to those previously estimated by GAO and appropriated funds for that purpose. Public Law 117–328, 136 Stat. at 6107; GAO, *U.S. Victims of State Sponsored Terrorism Fund: Estimated Lump Sum Catch-Up Payments*, GAO–21–105306 (Aug. 11, 2021).

³⁵ The Fund's “payment percentage” is the amount of funds available to pay all eligible claimants in a given round divided by compensatory damages after accounting for the individual and family statutory caps, compensation from other sources, and prior payments from the Fund. The payment percentage for the initial round of payments was 13.6561 percent (generally rounded to 13.66 percent in USVSST Fund communications). The payment percentage for the second round of payments was 4.1955 percent (rounded to 4.2 percent in USVSST Fund communications). The payment percentage for non-9/11-related claimants in the third round of payments was 5.8385 percent (rounded to 5.84 percent in USVSST Fund communications). The non-9/11-related payment percentage for the fourth round was 0.4047 percent (rounded to 0.4 percent in USVSST Fund communications). The payment percentage total for all four rounds is 24.0948 percent, rounded here to 24 percent. See U.S. Victims of State Sponsored Terrorism Fund, “Payment Calculation Explanation for Non-9/11-Related Claims,” at 5 (December 2022).

³⁶ 34 U.S.C. 20144(d)(4)(D)(i).

³⁷ GAO, *U.S. Victims of State Sponsored Terrorism Fund: Estimated Lump Sum Catch-Up Payments*, GAO–21–105306 (Aug. 11, 2021) (see Enclosure II for further discussion of the Fund's payment percentage and GAO's percentage calculation).

potentially eligible applications within the statutory application time frame in an equal percentage to that of the payments that have been made to non-9/11 claimants in the Fund's first three payment rounds.³⁸

We note that there are key differences in how the Fund calculated its payment percentage and how GAO calculated the percentage of lump sum catch-up payments for 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims. In particular, the Fund and GAO calculated percentages in different ways to fulfill distinct purposes. The Fund's mission in each payment round is to distribute the available money in the Fund—a known amount—among Fund claimants. Section 101 of the Fairness Act, however, directs GAO to estimate the amount of money that is needed to catch up eligible 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims in an equal percentage to that of the payments that have been made to non-9/11 claimants in the Fund's first three payment rounds.³⁹

Offsetting Eligible Claims With Compensation From Other Sources for Lump Sum Catch-Up Payments

GAO received comments regarding our planned approach of estimating two amounts in this notice: (1) the total amount needed to provide lump sum catch-up payments to potentially eligible 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims based on these victims' net eligible claims; and (2) the total amount needed to provide lump sum catch-up payments to potentially eligible 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims based on these victims' net eligible claims offset by compensation from other sources. Some commenters advocated for the final lump sum catch-up payment estimates provided by GAO to be offset by compensation from other sources for this population. These commenters stated that the statute governing the Fund and section 101 of the Fairness Act support an approach that is based on an individual's unpaid compensatory damages claim, which is an applicant's claim value after moneys received from sources other than the Fund are deducted. These commenters also noted that certain 1983 Beirut barracks

bombing victims and 1996 Khobar Towers bombing victims have received compensation from other sources that are to be offset by the Fund pursuant to the statute governing the Fund.⁴⁰

In contrast, other commenters advocated for the final lump sum catch-up payment estimates provided by GAO to not be offset by compensation from other sources for this population. These commenters stated that section 101 of the Fairness Act's use of the phrase "received from the Fund" should be read to modify the employment of 34 U.S.C. 20144(d)(3)(A) such that claims should not be offset other than from amounts received from the Fund. These commenters acknowledged 34 U.S.C. 20144(d)(3)(A)(i) provides that payments should be "based on the amounts outstanding and unpaid on eligible claims," but stated that this language does not apply to catch-up payments because the focus of the directive to GAO is on amounts received from the Fund. They further stated that the exemption for eligible 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims from the 30 percent rule for the purposes of receiving a lump sum catch-up payment indicates congressional intent that, for the purposes of these catch-up payments, the normal Fund rules offsetting payments should not apply.

Some commenters also raised concerns about GAO's planned approach of estimating two amounts and that GAO should provide only one estimated amount.

GAO's Response: Section 101 of the Fairness Act requires GAO to conduct this audit "in accordance with clauses (i) and (ii) of [34 U.S.C. 20144(d)(3)(A)]." Consistent with our prior lump sum catch-up payment calculation for 9/11 victims, spouses, and dependents, and in accordance with clause (ii) of 34 U.S.C. 20144(d)(3)(A), we plan to estimate lump sum catch-up payments for this population using their "net eligible claims,"⁴¹ that is, the amount of their claims after the application of individual and family statutory caps.⁴²

⁴⁰ See 34 U.S.C. 20144(d)(3)(A)(i). These commenters stated that while the Fairness Act explicitly exempts 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims from the 30 percent rule for the purposes of receiving a lump sum catch-up payment, the statute governing the Fund still requires that their total compensatory damages be offset of the moneys they have already received or are scheduled to receive.

⁴¹ For the purposes of our analysis, "net eligible claims" refers to the monetary amount of all eligible claims after the application of individual and family statutory caps. 34 U.S.C. 20144(d)(3)(A)(ii).

⁴² 34 U.S.C. 20144(d)(3)(A)(ii). For example, for individuals, the cap is \$20,000,000 and for claims

Section 101 also requires us to conduct our work in accordance with clause (i) of 34 U.S.C. 20144(d)(3)(A), which requires that payments be made "based on the amounts outstanding and unpaid on eligible claims." In order to give effect to this provision, compensatory damages from other sources received by the claimant under their final judgment must be subtracted to produce the amount "outstanding and unpaid" on their claims. In our prior work, we did not offset eligible 9/11 victims, spouses, and dependents' net eligible claims with compensation from other sources because that population did not have qualifying compensation from other sources.⁴³ Since certain 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims do have qualifying compensation from other sources, our reading of section 101's directive for us to conduct our work in accordance with clause (i) of 34 U.S.C. 20144(d)(3)(A) requires us to offset their net eligible claims by the amounts paid on eligible claims in the final lump sum catch-up payment estimates provided in our report.⁴⁴

In light of the language of clause (i) of 34 U.S.C. 20144(d)(3)(A), the comments

of non-9/11 family members when aggregated, the cap is \$35,000,000.

⁴³ See 34 U.S.C. 20144(d)(3)(A)(i)(III), (d)(3)(B).

⁴⁴ This provision is different than the minimum payments provisions in 34 U.S.C. 20144(d)(3)(B), under which any applicant with an eligible claim who has received, or is entitled or scheduled to receive, any payment that is equal to, or in excess of, 30 percent of the total compensatory damages owed to such applicant on the applicant's claim from any source other than the Fund shall not receive any payment from the Fund until such time as all other eligible applicants have received from the Fund an amount equal to 30 percent of the covered compensatory damages awarded to those applicants. See 34 U.S.C. 20144(d)(3)(A)(i) ("Except as provided in subparagraph (B) [minimum payments provisions] and subject to the limitations described in clause (ii) [individual and family statutory caps], the Special Master shall carry out paragraph (1), by . . . further dividing the funds allocated to non-9/11 related victims of state sponsored terrorism on a pro rata basis, based on the amounts outstanding and unpaid on eligible claims, until such amounts have been paid in full or the Fund is closed."). The Fairness Act added a new provision, codified at 34 U.S.C. 20144(d)(3)(B)(iii), stating that compensatory damages received or entitled or scheduled to be received by an applicant who is a 1983 Beirut barracks bombing victim or a 1996 Khobar Towers bombing victim as a result of or in connection with *Peterson* or *In Re 650 Fifth Avenue and Related Properties* are excepted for purposes of lump sum catch-up payments. In using the term "offsets," we refer to compensation from sources other than the Fund for the purposes of applying clause (i) of 34 U.S.C. 20144(d)(3)(A) and the minimum payments provisions. GAO's view is for purposes of implementing the Comptroller General's responsibilities under 34 U.S.C. 20144(d)(4)(D)(i)–(iii) to conduct an audit and calculate amounts for the Special Master to allocate lump sum catch-up payments.

³⁸ We did not include the Fund's fourth payment round because, according to the Fund, it did not begin issuing fourth-round payments until Jan. 4, 2023, after the Fairness Act was enacted.

³⁹ See our methodology section below for more details of the calculation of the GAO percentage.

we received on this issue, and concerns by some commenters about our approach of providing two amounts, we will provide in this notice one estimate: the total amount needed to provide lump sum catch-up payments to potentially eligible 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims based on these victims' net eligible claims offset by compensation from other sources.

Methodology To Produce Estimates for Lump Sum Catch-Up Payments

To estimate the amount(s) called for in section 101, GAO used the following data from the Fund: (1) payments from the Fund received by non-9/11 claimants in the first through third payment rounds;⁴⁵ (2) net eligible claims⁴⁶ of these non-9/11 claimants; (3) compensation from other sources received by these non-9/11 claimants;⁴⁷ (4) net eligible claims⁴⁸ of the 1983

Beirut barracks bombing victims and 1996 Khobar Towers bombing victims who submitted eligible applications to the Fund within the statutory application time frame (between December 29, 2022, and June 27, 2023);⁴⁹ and (5) compensation from other sources received by the 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims who submitted eligible applications to the Fund within the statutory application time frame.⁵⁰

any individual claim that exceeded the \$20 million individual statutory cap as \$20 million. For purposes of the \$35 million family statutory cap, GAO summed individual claims for those claims that indicated a family relationship in the data by a family identification number. Once summed, if claims within a family identification number exceeded the \$35 million family statutory cap, we then allocated the \$35 million family statutory cap among the family members in proportion to their individual claims. We provided our analysis to the Fund for review and they confirmed that based on their review our approach appeared consistent with their methodology. While this analysis enabled us to determine the "net eligible claims" for the purposes of estimating lump sum catch-up payments for our population, we recognize that the Fund may receive additional information or data in the future that might impact these amounts if these claimants are included in a future payment distribution.

⁴⁵ As discussed in footnote 9, this includes some 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims who were eligible for payment from the Fund in prior rounds. We did not include in this group 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims who did not receive any payment in the first through third payment rounds. We used this information to help us identify the percentage of claims of non-9/11 victims of state sponsored terrorism received from the Fund, as of the Fairness Act's enactment date (Dec. 29, 2022). See 34 U.S.C. 20144(d)(4)(D)(i). Given this reference to the act's enactment date, we omitted fourth-round payments from the calculation of the payment percentage because non-9/11 victims of state sponsored terrorism received them after that date. The Fund notified eligible claimants of their fourth-round payment amounts on Dec. 30, 2022, and began issuing the fourth-round payments on a rolling basis on Jan. 4, 2023, after the Fairness Act was enacted. U.S. Victims of State Sponsored Terrorism Fund, "Special Master's Report Regarding the Fourth Distribution," at 3 (January 2023).

⁴⁶ For the purposes of our analysis, "net eligible claims" refers to the monetary amount of all eligible claims after the application of individual and family statutory caps by the Fund, if applicable. 34 U.S.C. 20144(d)(3)(A)(ii).

⁴⁷ Not all compensation from other sources is necessarily offset against claimants' net eligible claims. When referring to "compensation from other sources" for purposes of our methodology and estimates, we are referring to compensation from other sources that the Fund would offset from its awards under its calculation methodology, which the Fund provided to GAO.

⁴⁸ As of March 2024, data from the Fund on the claim amounts after the application of individual and family statutory caps ("net eligible claims") for 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims who are potentially eligible for lump sum catch-up payments were not available for new applicants to the Fund. This is because these new claimants have not been included in a payment distribution that would require the application of individual and family statutory caps by the Fund. GAO used Fund methodology to apply the individual and family statutory caps to these claims. See U.S. Victims of State Sponsored Terrorism Fund, *Payment Calculation Explanation for Non-9/11-Related Claims* at 2–3 (December 2022). Before applying the \$35 million family statutory cap, we first treated

⁴⁹ We received data from the Fund as of May 2024 for 1,778 claimants for the 1983 Beirut barracks bombing and 308 claimants for the 1996 Khobar Towers bombing who submitted eligible applications to the Fund and applied in the statutory application time frame. Of those, 512 had received a prior eligibility determination from the Fund and 1,559 were new applicants. We also received data on 14 victims of these attacks who submitted applications during the statutory application time frame whose eligibility is still being determined by the Fund as of June 2024. Because eligibility for some of these victims is still being determined, we refer to the group as a whole as "potentially eligible" for catch-up payments. These applications are pending because the Fund is awaiting additional documentation from these individuals that is needed to determine their claims' eligibility. We encourage applicants with pending applications to provide requested documentation to the Fund that is needed to determine their claims' eligibility. For purposes of estimating lump sum catch-up payments in this notice, we are including all of the potentially eligible claims. However, in our final report, to be issued no later than 30 days following the close of the comment period, we will only include the total amount needed to provide lump sum catch-up payments to 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims who submitted claims that the Fund has deemed eligible.

⁵⁰ We obtained from the Fund information on compensation from other sources as of March 2024 for claimants who have eligibility for regular distributions from the Fund. Fund officials confirmed that, based on information included in these applications, all applicants who reported compensation from other sources are *Peterson* judgment creditors whose offsets are the amounts recovered in *Peterson*. After GAO informed the Fund that it would include claimants who previously had eligibility determinations made by the Fund in its estimated lump sum catch-up payment calculations, on May 31, 2024, the Fund provided the remaining offset information that the 78 conditional claimants who were *Peterson*

To carry out our mandate under section 101 of the Fairness Act, using data from the Fund described above, we estimated the amount of payments that non-9/11 claimants received in the first three rounds of Fund payments, as a percentage of their net eligible claims offset by compensation from other sources.⁵¹ We first determined the payment amounts received by non-9/11 claimants from the Fund in the first through third payment rounds.⁵² We then summed the payments for the three payment rounds across all non-9/11 claimants. Next, we determined the net eligible claims of the non-9/11 claimants as of the third round that they received a payment, offset by compensation from other sources, and summed across all claimants. We divided the amount of payments by the net eligible claims offset by compensation from other sources to determine the percentage called for in our mandate of 16.0353 percent (GAO's percentage calculation).⁵³

Estimates for Lump Sum Catch-Up Payments

Using GAO's percentage calculation, we estimated the total amount needed to provide lump sum catch-up payments to the 2,086 potentially eligible 1983

judgment creditors included in their applications for lump sum catch-up payments, for purposes of our audit and calculations. In order to apply the minimum payments provisions in 34 U.S.C. 20144(d)(3)(B), before issuing our final report, we will need to confirm the source of the offsets for these 78 conditional claimants. The Fund does not use information contained in duplicate applications administratively closed by the Fund for Fund purposes, according to the Fund officials.

⁵¹ In accordance with GAO standards, we will assess the reliability and completeness of the data from the Fund to ensure that it is appropriate for these purposes.

⁵² The non-9/11 claimants included 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims who received payments from the Fund. See 34 U.S.C. 20144(j)(9). In applying this standard, we excluded three types of claims: (1) those where the victim received no payments because they were conditional claimants; (2) those where the victim never received payment in any of the first through third rounds of distribution because compensation from other sources (offsets) exceeded 30 percent of the compensatory damages (before applying the individual and family statutory caps); and (3) those where the offsets exceeded the percentage of compensatory damages awarded to other eligible applicants in each of the first through third rounds of distribution for which these claims were eligible. See id. 20144(d)(4)(D)(i).

⁵³ We reported 4.6122 percent in the first notice. The percentage changed due to a data programming error that occurred in our initial estimate and has now been corrected. Specifically, the net eligible claims were inadvertently included in the initial round that the payment was received as well as in the subsequent rounds, resulting in a larger summed net eligible claims and a lower calculated percentage. Furthermore, the calculation included the fourth payment round which, as indicated in footnote 35, had a very low payment percentage among the four rounds.

Beirut barracks bombing victims and 1996 Khobar Towers bombing victims based on these victims' net eligible claims offset by compensation from other sources.⁵⁴ In the data provided, 1,495 of the potentially eligible 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims reported compensation from other sources of some non-zero amount, such as court-awarded compensation.⁵⁵ To identify a claimant's lump sum catch-up payment, the calculated GAO percentage will be applied to the claimant's net eligible claims offset by compensation from other sources. Then, to identify a net lump sum catch-up payment, we will subtract any amount of money a claimant had previously received from the Fund.⁵⁶ Our calculation produced \$614,988,012.55, the total amount needed to provide lump sum catch-up payments for Beirut barracks and Khobar Towers bombing victims who submitted eligible applications to the Fund within the statutory application time frame.⁵⁷

After consideration of the comments from this notice, we will issue a report using data from the Fund to report estimated lump sum catch-up payments based on this methodology with any changes we determine appropriate. We invite comments on all aspects of the planned methodology and lump sum catch-up payments proposed in this notice. Our final report will be available on *gao.gov*.

Authority: Pub. L. 117–328, div. MM, sec. 101(b)(3)(B)(iii), 136 Stat. 4459,

⁵⁴ In our prior work, we did not offset eligible 9/11 victims, spouses, and dependents' net eligible claims with compensation from other sources because this population did not have qualifying compensation from other sources. Although some 9/11 claimants may have received awards from the September 11th Victim Compensation Fund (VCF), money received from the VCF is not considered an offset for the Fund's award calculations. See U.S. Victims of State Sponsored Terrorism Fund, *Frequently Asked Questions*, <https://www.usvsst.com/Home/Faq> (last accessed June 18, 2024) (see 4.8 What is a source of compensation other than the USVSST Fund?).

⁵⁵ The Fund provided information about compensation from other sources for all potentially eligible 1983 Beirut barracks bombing victims and 1996 Khobar Towers bombing victims. According to Fund data, the reported compensation from other sources for some of these potentially eligible claimants was \$0. For potentially eligible claimants who received compensation from other sources of some non-zero amount, that compensation ranged from approximately \$65,000 to approximately \$5 million.

⁵⁶ The payments previously received from the Fund will include all the payment rounds—first through fourth rounds—as applicable.

⁵⁷ The net lump sum catch-up payment is the difference between the calculated lump sum catch-up and the compensation already received from the Fund (it would be zero if the compensation already received from the Fund is equal to or exceeds the calculated lump sum catch-up).

6108–6109 (pertinent portion codified at 34 U.S.C. 20144(d)(4)(D)).

Triana McNeil,

Director, Homeland Security and Justice, U.S. Government Accountability Office.

[FR Doc. 2024–15016 Filed 7–8–24; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–855B]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by September 9, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for “Comment or Submission” or “More Search Options” to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–855B Medicare Enrollment Application for Clinics/Group Practices and Other Suppliers

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collections

1. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* Medicare Enrollment Application for Clinics/Group Practices and Other Suppliers; *Use:* Various sections of the Act, the United States Code (U.S.C.), Internal Revenue Service (IRS) Code, and the CFR require providers and suppliers to

furnish information concerning the amounts due and the identification of individuals or entities that furnish medical services to beneficiaries before payment can be made. The Form CMS–855B application is submitted when the applicant first requests Medicare enrollment. The application is used by the MACs to collect data to ensure the applicant has the necessary credentials to provide the health care services for which they intend to bill Medicare; this includes data that allows the Medicare contractor to correctly price, process, and pay the applicant's claims. It also gathers information that enables MACs to ensure that the supplier is neither excluded from the Medicare program nor debarred, suspended, or excluded from any other Federal agency or program. The application is also used by enrolled suppliers when they are reporting a change in their ownership, a change in their current Medicare enrollment information, or are revalidating or reactivating their Medicare enrollment. *Form Number:* CMS–855B (OMB control number: 0938–1377); *Frequency:* Occasionally; *Affected Public:* Private Sector; Business or other for-profits, and Not-for Profits; *Number of Respondents:* 132,800; *Number of Responses:* 132,800; *Total Annual Hours:* 155,884. (For questions regarding this collection, contact Frank Whalen at 410–786–1302 or Frank.Whalen@cms.hhs.gov.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–14955 Filed 7–8–24; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10537 and CMS–43]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to

publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by August 8, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the

collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. Type of Information Collection
Request: Revision of a currently approved collection; *Title of Information Collection:* CAHPS Hospice Survey; *Use:* CMS launched the development of the CAHPS Hospice Survey in 2012. Public reporting of the results on Hospice Compare started in 2018. The goal of the survey is to measure the experiences of patients and their caregivers with hospice care. The survey was developed to:

Provide a source of information from which selected measures could be publicly reported to beneficiaries and their family members as a decision aid for selection of a hospice program;

Aid hospices with their internal quality improvement efforts and external benchmarking with other facilities; and

Provide CMS with information for monitoring the care provided.

Surveys focusing on patients' experience of care with their health care providers are an important part of the NQS. In addition to publicly reporting clinical quality measures, CMS is currently reporting measures from patient experience of care surveys in a variety of settings, including in-center hemodialysis (ICH) centers, hospitals, home health agencies, and hospices on the Medicare Care Compare website. (<https://www.medicare.gov/care-compare>). *Form Number:* CMS–10537 (OMB control number: 0938–1257); *Frequency:* Once; *Affected Public:* Individuals and Households; *Number of Respondents:* 1,159,420; *Total Annual Responses:* 1,159,420; *Total Annual Hours:* 168,115.90. (For policy questions regarding this collection contact Lauren Fuentes at 410–786 2290 or 443–618–2123).

2. Type of Information Collection
Request: Revision of a currently approved collection; *Title of Information Collection:* Application for Part A (Hospital Insurance) and Part B (Medical Insurance) for People with End-Stage Renal Disease; *Use:* Form CMS–43 (Application for Part A (Hospital Insurance) and Part B (Medical Insurance) for People with End-Stage Renal Disease) supports section 226A(a) of the Social Security Act (the Act) and corresponding regulations at 42 CFR 406.7(c)(3) and 406.13.

Individuals with End-Stage Renal Disease (ESRD) have the opportunity to apply for Medicare benefits and obtain premium-free Part A if they meet certain

criteria outlined in statute. Sections 226A of the Act authorizes entitlement for Medicare Hospital Insurance (Part A) if the individual with ESRD files an application for benefits and meets the requisite contributions through one's own employment or the employment of a related individual to meet the statutory definition of a "currently insured" individual outlined in section 214 of the Act. Further, for individuals who meet the requirements for premium-free Part A entitlement, Medicare coverage starts based on the dates in which the individual started dialysis treatment or had a kidney transplant. These statutory provisions are codified at 42 CFR 406.7(c)(3) and 407.13. *Form Number:* CMS-43 (OMB control number: 0938-0080); *Frequency:* Once; *Affected Public:* Individuals and Households *Number of Respondents:* 45,200; *Total Annual Responses:* 45,200; *Total Annual Hours:* 18,984. (For policy questions regarding this collection contact Candace Carter at 410-786-8466 or Candace.Carter@cms.hhs.gov).

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024-14956 Filed 7-8-24; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; The Understanding and Expanding the Reach of Home Visiting (HV-REACH) Project (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for

Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: As part of the Understanding and Expanding the Reach of Home Visiting (HV-REACH) project, the Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services is proposing to collect qualitative data to understand the features of centralized, coordinated, or collaborative intake systems used by seven purposively selected sites that refer families to early childhood home visiting (ECHV) programs.

DATES: *Comments due September 9, 2024.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing OPREinfocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The HV-REACH project is proposing to conduct seven qualitative case studies to provide an in-depth understanding of centralized intake systems, including how centralized intake systems reach potentially eligible families, and how staff and families think centralized intake systems support and expand the recruitment and enrollment of families in ECHV programs.

The goals of the study are to understand (1) the features, strengths, and challenges of centralized intake systems that refer to ECHV programs; (2) how centralized intake systems support outreach to and enrollment of families

in ECHV programs; (3) enrolled families' experiences with centralized intake systems.

We will conduct virtual or in person site visits in seven sites, where a site is defined as including a centralized intake organization(s) and one or two associated home visiting programs. We will collect documentation related to:

- outreach, enrollment, screening, and referrals processes and pathways, and data about the defining characteristics of centralized intake systems;
- local contexts and community needs;
- communication processes and feedback loops with families and programs;
- successes and challenges of the system and opportunities for improvement or technical assistance;
- home visiting program staff and family perceptions of centralized intake;
- implementation of centralized intake;
- staff and family experiences with outreach and enrollment processes using centralized intake; and
- staff and family background characteristics.

Findings will highlight opportunities for program improvement efforts, technical assistance, or changes to centralized intake system processes. We will disseminate findings in a report, research briefs, and presentations or briefings.

Respondents: Centralized intake administrators and other staff responsible for overseeing outreach and enrollment; home visiting program directors and other staff responsible for overseeing outreach and enrollment; home visitors and other staff responsible for conducting outreach and enrollment; and families enrolled in home-visiting programs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total/annual burden (in hours)
Centralized Intake Administrator Screening	19	1	0.33	3
On site coordination ¹	14	1	4.0	56
Centralized Intake Administrator and Other Staff Interview Protocol	42	1	1.5	63
Document Review Request	21	1	0.25	5
Home visiting program director and Other Staff Interview Protocol	28	1	1.0	28
Home visitor and Other Staff Interview Protocol	42	1	1.0	42
Family interview protocol	42	1	1.0	42
Participant characteristics form	114	1	0.08	9

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total/annual burden (in hours)
Total Annual Burden				248

¹ There is no instrument associated with this activity, which refers to the time spent by the on-site coordinator (nominated by the home visiting program director) to help the research team coordinate data collection activities.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Social Security Act, title V, section 511 (42 U.S.C. 711), as extended by the Consolidated Appropriations Act of 2023 (Pub. L. 117–328) (fiscal years 2023–2027).

Mary C. Jones,
ACF/OPRE Certifying Officer.

[FR Doc. 2024–14949 Filed 7–8–24; 8:45 am]

BILLING CODE 41842–77–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–1464]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; New Animal Drugs for Investigational Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the

collection of information by August 8, 2024.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. The OMB control number for this information collection is 0910–0117. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

New Animal Drugs for Investigational Use

OMB Control Number 0910–0117—Extension

This information collection helps support implementation of Agency statutory and regulatory requirements regarding the approval of new animal drugs. FDA has the authority under the Federal Food, Drug, and Cosmetic Act (FD&C Act) to approve new animal drugs. A new animal drug application (NADA) cannot be approved until, among other things, the new animal drug has been demonstrated to be safe and effective for its intended use(s). In order to properly test a new animal drug for an intended use, appropriate scientific investigations must be conducted. Under specific circumstances, section 512(j) of the FD&C Act (21 U.S.C. 360b(j)) permits the use of an investigational new animal drug to generate data to support a NADA approval. Section 512(j) of the FD&C Act authorizes us to issue

regulations relating to the investigational use of new animal drugs.

Our regulations in part 511 (21 CFR part 511) set forth the conditions for investigational use of new animal drugs and require reporting and recordkeeping to qualify for the exemption from section 512(a) of the FD&C Act. The information collected is necessary to protect the public health. We use the information to determine that investigational animal drugs are distributed only to qualified investigators, adequate drug accountability records are maintained, and edible food products from treated food-producing animals are safe for human consumption. We also use the information collected to monitor the validity of the studies submitted to us to support new animal drug approval.

Our regulations require that certain information be submitted to us in a “Notice of Claimed Investigational Exemption for a New Animal Drug” (NCIE) to qualify for the exemption and to control shipment of the new animal drug and prevent potential abuse. We also require reporting by importers of investigational new animal drugs (INDs) for clinical investigational use in animals (§ 511.1(b)(9)). The information provided by the sponsor in the NCIE is needed to help ensure that the proposed investigational use of the new animal drug is safe and that any edible food will not be distributed without proper authorization from FDA. Information contained in an NCIE submission is monitored under our Bioresearch Monitoring Program. This program permits us to monitor the validity of the studies and to help ensure the proper use of the drugs is maintained by the investigators.

Sponsors use eSubmitter, a secure online, question-based submission tool, to submit the NCIE electronically (<https://www.fda.gov/industry/fda-esubmitter/cvm-esubmitter-programs>).

Description of Respondents: Respondents to this collection of information are persons who use new animal drugs for investigational purposes. INDs are used primarily by drug industry firms, academic institutions, and the government (*i.e.*,

sponsors of INDs). Investigators may include individuals from these entities, as well as research firms and members of the medical professions. With respect to this information collection, the term “respondent” includes sponsors who are subject to user fees and sponsors who are not subject to user fees. In the **Federal Register** of May 2, 2024 (89 FR 35838), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received. FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ^{1 2}

21 CFR section/activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
511.1(b)(4), 511.1(b)(5) 511.1(b)(6) 511.1(b)(8)(ii), and 511.1(b)(9); submissions of NCIE, data to obtain authorization, any additional information upon request of FDA, reporting of findings that may suggest significant hazards, and reporting by importers of investigational new animal drugs for clinical investigational use in animals	257	5.70	1,466	1.12	1,634

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.
² Totals may not sum due to rounding.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN ^{1 2}

21 CFR section/activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
511.1(a)(3), 511.1(b)(3), 511.1(b)(7), and 511.1(b)(8)(ii); Maintain records showing the name and post office address of the expert or expert organization to whom the new animal drug, or feed containing the same is shipped and the date, quantity, and batch or code mark of each shipment and delivery; maintain records of the investigation and all reports received by a sponsor from investigators	257	17.44	4,482	2.57	11,519

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.
² Totals may not sum due to rounding.

The NCIE must contain, among other things, the following specific information: (1) identity of the new animal drug, (2) labeling, (3) statement of compliance of any non-clinical laboratory studies with good laboratory practices, (4) name and address of each clinical investigator, (5) the approximate number of animals to be treated or amount of new animal drug(s) to be shipped, and (6) information regarding the use of edible tissues from investigational animals (§ 511.1(b)(4)). If the new animal drug is to be used in food-producing animals (*e.g.*, cattle, swine, chickens, fish, etc.), certain data must be submitted to us to obtain authorization for the use of edible food products from treated food-producing animals (§ 511.1(b)(5)). We require sponsors upon request to submit information with respect to the investigation to determine whether there are grounds for terminating the exemption (§ 511.1(b)(6)). We require sponsors to report findings that may suggest significant hazards pertinent to the safety of the new animal drug (§ 511.1(b)(8)(ii)).

If the new animal drug is only for tests in vitro or in laboratory research animals, the person distributing the new animal drug must maintain records showing the name and post office

address of the expert or expert organization to whom it is shipped and the date, quantity, and batch or code mark of each shipment and delivery for a period of 2 years after such shipment or delivery (§ 511.1(a)(3) and (b)(3)).

We require complete records of the investigation, including records of the receipt and disposition of each shipment or delivery of the investigational new animal drug (§ 511.1(b)(7)). We also require records of all reports received by a sponsor from investigators to be retained for 2 years after the termination of an investigational exemption or approval of a NADA (§ 511.1(b)(8)(i)).

The estimate of the time required for reporting requirements, record preparation, and maintenance for this collection of information is based on our informal communication with industry. Based on the number of sponsors subject to animal drug user fees, we estimate that there are 257 respondents. We use this estimate throughout both tables to calculate the “number of responses per respondent” by dividing the total annual responses by number of respondents. The burden we attribute to reporting and recordkeeping activities is assumed to be distributed among the individual elements of the respective information collection activities.

Additional information needed to make a final calculation of the total burden hours (*i.e.*, the number of respondents, the number of recordkeepers, the number of NCIEs received, etc.) is derived from our records.

Since our last renewal, there is an adjustment decrease in the total burden hours of 2,401, which we attribute to a decrease in the number of respondents, annual responses, and records.

Dated: July 3, 2024.

Lauren K. Roth,
Associate Commissioner for Policy.
[FR Doc. 2024–15011 Filed 7–8–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****[Docket No. FDA-2014-D-0447]****Addressing Misinformation About Medical Devices and Prescription Drugs: Questions and Answers; Draft Guidance for Industry; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a revised draft guidance for industry entitled “Addressing Misinformation About Medical Devices and Prescription Drugs: Questions and Answers.” This revised draft guidance, when finalized, will describe FDA’s current thinking on common questions firms may have when voluntarily addressing misinformation about or related to their approved/cleared medical products. This guidance revises and replaces the draft guidance for industry entitled “Internet/Social Media Platforms: Correcting Independent Third-Party Misinformation About Prescription Drugs and Medical Devices” issued in June 2014. This revised draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by September 9, 2024 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance. Submit electronic or written comments on the proposed collection of information in the draft guidance by September 9, 2024.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or

confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2014-D-0447 for “Addressing Misinformation About Medical Devices and Prescription Drugs: Questions and Answers.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as

“confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002; the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002; the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993-0002; or the Policy and Regulations Staff, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the draft guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT:

With regard to the draft guidance: Samantha Bryant, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Room 3203, Silver Spring, MD 20993-0002, 301-796-1200; James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911; Stephanie Philbin, Center for Devices and Radiological Health, Food and Drug Administration,

10903 New Hampshire Ave., Bldg. 66, Rm. 5456, Silver Spring, MD 20993–0002, 301–837–7151; Kathryn Dennehy, Center for Veterinary Medicine (HFV–245), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–7082, Kathryn.Dennehy@fda.hhs.gov; or Julie Finegan, Office of Policy, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4252, Silver Spring, MD 20993–0002, 301–827–4830.

With regard to the proposed collection of information: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance for industry entitled “Addressing Misinformation About Medical Devices and Prescription Drugs: Questions and Answers.” In addition to describing already existing avenues for communications by firms, the guidance sets out an enforcement policy for certain kinds of internet-based communications that firms might choose to use to address internet-based misinformation about or related to the firm’s approved/cleared medical product when that misinformation is created or disseminated by an independent third party. This guidance is not intended to address a firm’s correction of its own false or misleading representations about its medical products. For the purposes of this guidance, the term firms refers to the persons or entities legally responsible for the labeling of approved/cleared medical products, which includes applicants, sponsors, manufacturers, packers, distributors, and any persons communicating on behalf of these entities. The term medical product refers to a medical device for human use (including one that is a biological product), a prescription human drug (including one that is a biological product), or a prescription animal drug. The term approved/cleared medical product refers to medical products (as that term is defined in this guidance) that may be introduced into interstate commerce for at least one use under the Federal Food, Drug, and Cosmetic Act (FD&C Act), the Public Health Service Act, and their implementing regulations (collectively, the FDA Authorities) as a result of having satisfied applicable premarket requirements. For ease of reference, when approval and clearance

(and similar terms) are used in discussing devices, the terms refer to FDA permitting the marketing of a device via the premarket approval, premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)), De Novo classification, or Humanitarian Device Exemption pathways and to devices that are exempt from premarket notification.

For the purposes of this guidance and as further described in section II of the guidance, the term misinformation refers to implicit or explicit false, inaccurate, or misleading representations of fact about or related to the firm’s approved/cleared medical product.

Misinformation about a firm’s approved/cleared medical product can cause harm to both individuals and the public health in general. Basing medical decisions on misinformation can lead patients and healthcare providers to choose treatments that are not safe and effective, or forgo treatments that are, which can have adverse consequences. While misinformation can appear in many forms of communication and be shared in many different ways, internet-based forms of communication have enabled misinformation to travel quickly and reach more people who otherwise might not be exposed to that misinformation. Additionally, misinformation about or related to medical products that treat or prevent serious or life-threatening diseases is especially concerning and represents a significant public health concern.

This guidance revises and replaces the draft guidance for industry entitled “Internet/Social Media Platforms: Correcting Independent Third-Party Misinformation About Prescription Drugs and Medical Devices,” issued in June 2014 (2014 draft guidance). The revised draft guidance reflects the Agency’s consideration of feedback from interested parties, including comments received on the 2014 draft guidance. Changes include a revised title, a question-and-answer format, and certain changes in scope. For example, the enforcement policy now extends to a firm’s voluntary “tailored responsive communications” that address misinformation that suggests that the firm’s cleared/approved medical product be used for an unapproved use. Additionally, new content has been added to reflect changes in technology and functionality of internet-based platforms, as well as changes in the way information is shared online to help a firm to have greater flexibility and control over the timing of the firm’s communication when the firm chooses to address certain internet-based third-

party misinformation with “tailored responsive communications.” This guidance also now includes a subsection on “general medical product communications” that describes many existing avenues available to firms for communicating information about or related to their approved/cleared medical products. New examples were also added to illustrate the new considerations and recommendations outlined in the guidance and to provide additional clarity to firms.

This revised draft guidance, when finalized, is intended to advance FDA’s mission to help members of the public get the accurate, up-to-date, science-based information they need to inform their decisions about medical products to maintain and improve their health. More specifically, the guidance describes two categories of communications firms might choose to use to address misinformation: tailored responsive communications and general medical product communications.

As described in the guidance, a “tailored responsive communication” is a firm’s voluntary, internet-based communication that identifies and addresses internet-based misinformation about or related to the firm’s approved/cleared medical product when that misinformation is created or disseminated by an independent third party.

For the purposes of this guidance, communications through existing avenues are collectively referred to as “general medical product communications.” Unlike the tailored responsive communications described in the guidance, general medical product communications are not necessarily internet-based or prompted by or tailored to address specific identified internet-based misinformation. General medical product communications can include, among other things, content and messaging that address misinformation about a firm’s approved/cleared medical product. Inclusion in a general medical product communication of content that addresses misinformation creates no special considerations regarding the application of the FDA Authorities or other FDA enforcement policies.

FDA recognizes that misinformation about or related to medical products authorized for emergency use is a public health concern. The Agency continues to evaluate the unique considerations that can apply to communications by firms addressing misinformation about or related to such products. As such, this revised draft guidance does not apply to communications by firms that address misinformation about or related

to an emergency use authorized for the firm's medical product under section 564 of the FD&C Act (21 U.S.C. 360bbb-3), whether that be an emergency use authorized for an "unapproved use of an approved product", or an emergency use authorized for an "unapproved product", as those terms are used in section 564(a) of the FD&C Act. See section 564 of the FD&C Act for more information on the authorities for emergency use authorizations.

This revised draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The revised draft guidance, when finalized, will represent the current thinking of FDA on "Addressing Misinformation About Medical Devices and Prescription Drugs: Questions and Answers." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information

before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Disclosures for Tailored Responsive Communications Addressing Misinformation About Medical Devices and Prescription Drugs

OMB Control Number 0910–NEW

The revised draft guidance document, "Addressing Misinformation About Medical Devices and Prescription Drugs: Questions and Answers," describes two categories of communications firms might choose to use to address misinformation: tailored responsive communications and general medical product communications. As explained in the guidance, general medical product communications are already existing avenues for communication and are subject to approved information collections, summarized below. The

revised draft guidance recommends that a firm's tailored responsive communication clearly identify both the specific misinformation that the firm is addressing and a specific internet-based, independent third-party communication in which that misinformation appears. Additionally, the revised draft guidance discusses disclosures that we recommend firms include when choosing to share tailored responsive communications.

Specifically, the guidance recommends that firms include (1) a mechanism for obtaining a copy of the current FDA-required labeling (including FDA-approved patient labeling, if any), (2) the date the firm's tailored responsive communication is posted (if a date is not automatically generated), and (3) a disclosure that the tailored responsive communication is being shared by the medical product firm or that the person addressing the misinformation is affiliated with the firm and is authorized to provide information on behalf of the firm about the medical product. The guidance also provides recommendations for firms that wish to use a tailored responsive communication to address misinformation about or related to an unapproved use of the firm's approved/cleared medical product. Specifically, the guidance recommends including an additional disclosure identifying the unapproved use and noting that the unapproved use of the medical product has not been approved by FDA and that the safety and effectiveness of the medical product for the unapproved use has not been established.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN¹

Recommended disclosure activity; guidance section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Clearly identify both the specific misinformation that the firm is addressing and a specific internet-based, independent third-party communication in which that misinformation appears; Section IV.A. Q3.	958	50	47,900	0.4 (24 minutes)	19,160
A mechanism for obtaining a copy of the current FDA-required labeling (including FDA-approved patient labeling, if any); Section IV.A. Q5.	958	50	47,900	0.1 (6 minutes)	4,790
The date the firm's tailored responsive communication is posted (if a date is not automatically generated); Section IV.A. Q5.	958	50	47,900	0.05 (3 minutes)	2,395
A disclosure that the tailored responsive communication is being shared by the medical product firm or that the person addressing the misinformation is affiliated with the firm and is authorized to provide information on behalf of the firm about the medical product; Section IV.A. Q5.	958	50	47,900	0.1 (6 minutes)	4,790
In the case of a tailored responsive communication that addresses misinformation about an unapproved use of the firm's approved/cleared medical product, a disclosure identifying the unapproved use and noting that the unapproved use of the medical product has not been approved by FDA and that the safety and effectiveness of the medical product for the unapproved use has not been established; Section IV.A. Q5.	958	5	4,790	0.1 (6 minutes)	479
Total .....	.....	.....	196,390	.....	31,614

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on data currently available to FDA on the number of firms disseminating promotional communications about prescription drugs (697) combined with an estimated number of device firms marketing products (261), we assume that approximately 958 firms (“number of respondents” in table 1) might each choose to disseminate 50 tailored responsive communications annually. Our estimate of the burden per disclosure reflects what we believe is the average burden based on the number and content and complexity of disclosures as recommended in the guidance.

This draft guidance also refers to previously approved FDA collections of information. The collections of information in 21 CFR part 314 are approved under OMB control number 0910–0001. The collections of information in 21 CFR part 201 regarding content and format of labeling for human drug and biological products are approved under OMB control number 0910–0572. The collections of information in 21 CFR part 801 are approved under OMB control number 0910–0485. The collections of information in 21 CFR 202.1 regarding prescription drug advertising are approved under OMB control number 0910–0686. The collections of information in 21 CFR part 601 regarding marketing approval of biological products are approved under OMB control number 0910–0338; and the collections of information regarding marketing approval of animal drug products in 21 CFR part 514 are approved under OMB control number 0910–0032.

III. Electronic Access

Persons with access to the internet may obtain an electronic version of the draft guidance at <https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, <https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm>, <https://www.fda.gov/animal-veterinary/guidance-regulations/guidance-industry>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: July 3, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–15009 Filed 7–8–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–2844]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reclassification Petitions for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with reclassification of medical devices.

DATES: Either electronic or written comments on the collection of information must be submitted by September 9, 2024.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 9, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any

confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2024–N–2844 for “Agency Information Collection Activities; Proposed Collection; Comment Request; Reclassification Petitions for Medical Devices.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management

Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in

the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reclassification Petitions for Medical Devices—21 CFR Part 860, Subpart C

OMB Control Number 0910–0138—Extension

This information collection helps support implementation of statutory provisions found in sections 513(e) and (f), 514(b), 515(b), and 520(l) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360c(e) and (f), 21 U.S.C. 360d(b), 21 U.S.C. 360e(b), and 21 U.S.C. 360j(l)) pertaining to the reclassification of medical devices. Specifically, the FD&C Act establishes three tiers of regulatory control for medical devices, by establishing three classes of medical devices, and requiring that all devices be classified into one of these three classes. The

classification of a device depends upon the degree of regulatory control necessary to provide a reasonable assurance of the safety and effectiveness of the device. The three tiers of regulatory control are: (1) Class I—general controls, subject to sections 501 adulteration, 502 misbranding, 510 registration, 516 banned devices, 518 notification and other remedies, 519 records and reports, and 520 general provisions of the FD&C Act; (2) Class II—performance standards; and (3) Class III—premarket approval.

Implementing regulations in 21 CFR part 860, subpart C (parts 860.120 through 860.136) provide that any person may petition for reclassification of a device from any class to any other class, and prescribe requisite format and content elements for reclassification petitions submitted to the Agency. We also provide information on our website at <https://www.fda.gov/about-fda/cdrh-transparency/reclassification> regarding medical device reclassification, which may serve as a helpful resource to respondents.

FDA is responsible for reviewing petitions for reclassification and determining whether the subject device will be reclassified. In some instances, FDA also submits such petitions to one of its medical device advisory panels for review and recommendations. FDA’s decision regarding the reclassification of a device is based primarily upon the information contained in the petition. Respondents to the information collection are private sector, for-profit businesses. We have not identified reclassification petitions as a type of submission we are currently prepared to accept electronically. Submission instructions, including addresses, are provided in § 860.123(b).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR part; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§ 860.123; supporting data for reclassification petitions	12	1	12	497	5,964

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Reclassification petitions must be submitted as set forth in the applicable regulations, which provide for the submission of an original and two copies (§ 860.123(b)(4)). Each petition must include supporting data to show why reclassification of the device type will provide reasonable assurance of the safety and effectiveness of the device

type. The principal data in such a petition will typically be reports of clinical trials.

Our estimated burden for the information collection reflects an increase of 6 responses and a corresponding increase of 2,982 hours. We attribute this adjustment to an

increase in the number of submissions we received over the last few years.

Dated: July 3, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–14995 Filed 7–8–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-D-2484]

Purpose and Content of Use-Related Risk Analyses for Drugs, Biological Products and Combination Products; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry and FDA staff entitled “Purpose and Content of Use-Related Risk Analyses for Drugs, Biological Products, and Combination Products.” This document provides guidance to industry and FDA staff on the purpose and content of a use-related risk analysis (URRA) and how a URRA, along with other information, can be used to determine human factors (HF) data needs during product development and to support a marketing application.

DATES: Submit either electronic or written comments on the draft guidance by September 9, 2024 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a

written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2024-D-2484 for “Purpose and Content of Use-Related Risk Analyses for Drugs, Biological Products and Combination Products.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov>

and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002; the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002; or the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Jason Flint, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave, Bldg. 22, Rm. 4488, Silver Spring, MD 20993-0002, 240-402-6293, OSE.PMKTREGS@fda.hhs.gov; Tania Reina, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2502, Silver Spring, MD 20993-0002, 301-221-7499; John Barlow Weiner, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5129, Silver Spring, MD 20993-0002, 301-796-8930, combination@fda.gov; or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7226, Silver Spring, MD 20993-0002, 240-402-5923.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and FDA staff entitled “Purpose and Content of Use-Related Risk Analyses for Drugs, Biological Products, and Combination

Products.” This guidance provides recommendations to industry and FDA staff on the purpose and content of a URRA and how a URRA, along with other information, can be used to determine HF data needs during product development and to support a marketing application. This guidance applies to drug- and biologic-led combination products that are the subject of an investigational new drug application (IND), a new drug application (NDA), or a biologics license application (BLA) and supplements to these applications. This guidance also applies to human prescription drug products, including biological products, that are the subject of an IND, NDA, or BLA and supplements to these applications, and to human nonprescription drug products that are the subject of an IND or NDA and supplements to these applications. This guidance does not describe the methods used to design, conduct, or analyze human factors studies (for example, human factors validation studies or comparative use human factors studies).

The URRA is a risk management tool that supports the entire human factors engineering process and should be considered as part of an overall risk management framework. The URRA can be used in all phases of the medical product lifecycle. As part of evaluating the products as described above, FDA will evaluate human factors data submitted by sponsors to support the product user interface when submission of such data is warranted. The URRA can be used as one data element to help determine whether submission of human factors data is warranted.

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on “Purpose and Content of Use-Related Risk Analyses for Drugs, Biological Products and Combination Products.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 312

pertaining to the submission of INDs have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 pertaining to the submission of NDAs and supplements to NDAs have been approved under 0910–0001. The collections of information in 21 CFR part 601 pertaining to the submissions of BLAs and supplements to BLAs have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, <https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: July 2, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–15003 Filed 7–8–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–6395]

Request for Applications for New Members of the Clinical Trials Transformation Initiative/Food and Drug Administration Patient Engagement Collaborative

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for applications.

SUMMARY: The Food and Drug Administration (FDA or Agency), in collaboration with the Clinical Trials Transformation Initiative (CTTI), is requesting applications from patient advocates interested in participating on the Patient Engagement Collaborative (PEC). The PEC is an ongoing, collaborative forum coordinated through the FDA’s Patient Affairs Staff, Office of Clinical Policy and Programs (OCP), Office of the Commissioner at FDA, and is hosted by CTTI. Through the PEC, the patient community and FDA staff are able to discuss an array of topics related to increasing meaningful patient

engagement with diverse populations in medical product development and regulatory discussions at FDA. The activities of the PEC may include, but are not limited to, providing diverse perspectives on topics such as systematic patient engagement, transparency, and communication; providing considerations for implementing new strategies to enhance patient engagement at FDA; and proposing new models of collaboration in which patient, caregiver, and patient advocate perspectives can inform medical product development and regulatory discussions.

DATES: Applications can be submitted starting at 11:59 p.m. Eastern Time on July 9, 2024. This announcement is open to receive a maximum of 75 applications. Applications will be accepted until 11:59 p.m. Eastern Time on August 8, 2024 or until 75 applications are received, whichever happens first.

ADDRESSES: All applications should be submitted to FDA’s Patient Affairs Staff in OCP. The preferred application method is via the online submission system provided by CTTI, available at https://duke.qualtrics.com/jfe/form/SV_3DlHjcaGryUilg. For those applicants unable to submit an application electronically, please call FDA’s Patient Affairs Staff at 301–796–8460 to arrange for mail or delivery service submission. Only complete applications, as described under section IV of this document, will be considered.

FOR FURTHER INFORMATION CONTACT: Wendy Slavitt, Office of the Commissioner, Office of Clinical Policy and Programs, Patient Affairs Staff, Food and Drug Administration, 301–796–8460, PatientEngagementCollaborative@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

The CTTI is a public-private partnership cofounded by FDA and Duke University whose mission is to develop and drive adoption of practices that will increase the quality and efficiency of clinical trials. FDA and CTTI have long involved patients and considered patient perspectives in their work. Furthering the engagement of diverse patients as valued partners across the medical product research and development continuum requires an open forum for patients and regulators to discuss and exchange ideas.

The PEC is an ongoing, collaborative forum in which the patient community and FDA Staff discuss an array of topics related to increasing patient engagement

in medical product development and regulatory discussions at FDA. The PEC is a joint endeavor between FDA and CTTI. The activities of the PEC may inform relevant FDA and CTTI activities. The PEC is not intended to advise or otherwise direct the activities of either organization, and membership will not constitute employment by either organization.

The Food and Drug Administration Safety and Innovation Act (Pub. L. 112–14), section 1137, entitled “Patient Participation in Medical Product Discussions,” added section 569C to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb–8c). This provision directs the Secretary of Health and Human Services to “develop and implement strategies to solicit the views of patients during the medical product development process and consider the perspectives of patients during regulatory discussions.” On November 4, 2014, FDA issued a **Federal Register** notice establishing a docket (FDA–2014–N–1698) for public commenters to submit information related to FDA’s implementation of this provision. Upon review of the comments received, one common theme, among others, included establishing an external group to provide input on patient engagement strategies across FDA’s Centers. After considering the comments, FDA formed the PEC in 2018 to discuss a variety of patient engagement topics. This group is consistent with additional legislation subsequently enacted in section 3001 of the 21st Century Cures Act (Pub. L. 114–255) and section 605 of the FDA Reauthorization Act of 2017 (Pub. L. 115–52), further supporting tools for fostering patient participation in the regulatory process.

The PEC currently has 16 members. To help ensure continuity in its activities and organizational knowledge, the PEC maintains staggered membership terms. During the fall of 2024, eight members will complete a term and up to eight new members will be selected. The purpose of this notice is to announce that the application process for up to eight new members of the PEC is now open, and to invite and encourage applications by the submission deadline for appropriately qualified individuals.

II. Criteria for Membership

The PEC includes up to 16 diverse representatives of the patient community. Eight members from the previous application process will remain on the PEC. The current application process is to select up to eight new PEC members. Selected members will include the following: (1)

patients who have personal experience with a disease or medical condition; (2) caregivers who help support a patient—parent, child, partner, other family member, or friend—as they manage their disease or medical condition; and/or (3) representatives of patient groups who, through their role in the patient group, have direct or indirect disease experience. Please note that for purposes of this activity, the term “caregiver” is not intended to include individuals who are engaged in caregiving as healthcare professionals; and the term “patient group” is used herein to encompass patient advocacy organizations, disease advocacy organizations, voluntary health agencies, nonprofit research foundations, and public health organizations. The ultimate goal of the application and selection process is to identify individuals who can represent patient voices for their patient community.

Selection criteria include the applicant’s potential to meaningfully contribute to the activities of the PEC, ability to represent and express patient voices for their constituency, ability to work in a constructive manner with interested parties/groups (such as patients, caregivers, advocates, academic institutions, government agencies, medical product development companies), and understanding of the clinical research enterprise. Consideration will also be given to ensuring the PEC includes diverse perspectives and experiences, including but not limited to sociodemographic factors (such as age, gender, ethnicity, and education level) and disease experience. PEC members are required to be residents of the United States and must be 18 years of age or older.

Financial and other conflicts of interest will not necessarily make applicants ineligible for membership in the PEC. However, applicants cannot be direct employees of the medical product development industry or a currently registered lobbyist for an FDA-regulated industry.

III. Responsibilities and Expectations

Participation as a PEC member is voluntary. Meetings will be held up to four times per year and will be conducted virtually with the potential for in-person events (in the Washington, DC area).

Reasonable accommodations will be made for members with special needs for participation in a meeting or for any necessary travel. Applications for PEC membership are encouraged from individuals of all ages, sexes, genders, sexual orientations, racial and ethnic

groups, education levels, income levels, geographic locations, and those with and without disabilities. Travel support will be provided, as applicable.

To help ensure continuity in its activities and organizational knowledge, the PEC will maintain staggered membership terms for patient community representatives. Membership terms for new members will be 2-year appointments, beginning January 1, 2025.

Additional responsibilities and expectations are set forth in the PEC Framework, which should be reviewed prior to submitting an application, and is available at https://ctti-clinicaltrials.org/wp-content/uploads/2023/05/PEC-Framework_Revised-Apr-10-2023_FINAL.pdf.

IV. Application Process

Any interested person may apply for membership on the PEC. To apply, go to https://duke.qualtrics.com/jfe/form/SV_3DlHjcaGryUilg. The application is completed online and includes questions to help determine eligibility for the PEC, demographic and other background questions, and four brief essay questions. The brief essay questions, to be answered in 500 characters or fewer (including spaces), are as follows:

- Please explain why and how you would be able to represent and express the patient voice for the disease area(s) you selected above.
- Please give a few examples of experiences that demonstrate how you use active listening and two-way communication to work across interested parties/groups (such as patients, caregivers, advocates, academic institutions, government agencies, medical product development companies).
- Please provide a few examples of any experience you have with medical product development or understanding regulatory processes.
- Please tell us why you are interested in becoming a member of the PEC and how you would enrich our group discussions.

Completing the application also involves submitting: (1) a current one-page résumé or bio that summarizes your patient advocacy experience and related activities (PDF format required) and (2) a one-page letter of endorsement from a patient group (or other similar group) with which the applicant has worked closely on activities that are relevant to the PEC (PDF format required). Please note, only the application and the two documents specified above will be reviewed. Your completed application form, résumé or

bio, and letter of endorsement should all be submitted at the same time.

The résumé or bio must provide examples and descriptions of relevant activities and experiences related to the applicant's qualifications for PEC membership. The letter of endorsement should emphasize information relevant to the criteria for membership described above. This letter must be from and written by someone other than yourself. The letter may address topics such as the applicant's involvement in patient advocacy activities, experiences that stimulated an interest in participating in discussions about patient engagement in medical product development and regulatory decision processes, and other information that may be helpful in evaluating the applicant's qualifications as a potential member of the PEC.

Applications will be accepted until 11:59 p.m. Eastern Time on August 8, 2024 or until 75 applications are received, whichever happens first. Only complete applications will be considered.

The application review period will take a minimum of 2 months after 11:59 p.m. Eastern Time on August 8, 2024.

Additional information may be needed from some applicants during the review period, including information relevant to understanding potential sources of conflict of interest, in which case applicants will be contacted directly. All applicants (both those selected for PEC membership and those who are not selected) will be notified by email of the final application decision no later than December 31, 2024.

Dated: July 3, 2024.

Lauren K. Roth,
Associate Commissioner for Policy.

[FR Doc. 2024–15008 Filed 7–8–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Funding Opportunity for Ending the HIV/HCV/Syphilis Epidemics in Indian Country II (ETHIC II): A Syndemic Elimination Program for American Indian/Alaska Native Tribes and Urban Indian Communities

Announcement Type: New.

Funding Announcement Number:
HHS–2024–IHS–ETHIC–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number:
93.933.

Key Dates

Application Deadline Date: July 31, 2024.

Earliest Anticipated Start Date:
September 1, 2024.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for the second round of cooperative agreement for the Ending the Human Immunodeficiency Virus (HIV), Hepatitis C Virus (HCV), and Syphilis Epidemics (known as “the Syndemic”) in Indian Country (ETHIC II) program. This program is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and the Indian Health Care Improvement Act, 25 U.S.C. 1621q, 1660e. The Assistance Listings section of SAM.gov (<https://sam.gov/content/home>) describes this program under 93.933.

Purpose

The purpose of this program is to support communities to directly increase the diagnoses, treatment, and prevention of HIV, HCV, and syphilis.

The full Notice of Funding Opportunity and all application materials can be found on *Grants.gov* at <https://grants.gov/search-results-detail/355020>.

II. Award Information

Funding Instrument—Cooperative Agreement

Estimated Funds Available

The total funding identified for fiscal year (FY) 2024 is approximately \$14 million. Individual award amounts are anticipated to be between \$150,000 and \$2,000,000.

Anticipated Number of Awards

The IHS anticipates issuing approximately 26 awards under this program announcement.

Period of Performance

The period of performance is for 5 years.

III. Eligibility Information

1. Eligibility

To be eligible for this funding opportunity an applicant must be one of the following, as defined by 25 U.S.C. 1603:

- A federally recognized Indian Tribe as defined by 25 U.S.C. 1603(14).
- A Tribal organization as defined by 25 U.S.C. 1603(26).
- An Urban Indian organization, as defined by 25 U.S.C. 1603(29).

IV. Agency Contacts

1. Questions on the program matters may be directed to:

Rick Haverkate, HIV/HCV/STI Branch,
5600 Fishers Lane, 08N07, MAIL
STOP: 08N34–A, Rockville, MD
20857, Phone: 240–678–2873, Fax:
301–594–6213, Email:
Richard.Haverkate@ihs.gov.

2. Questions on awards management and fiscal matters may be directed to:

Indian Health Service, Division of
Grants Management, 5600 Fishers
Lane, Mail Stop: 09E70, Rockville,
MD 20857, Email: DGM@ihs.gov.

3. For technical assistance with *Grants.gov*, please contact the *Grants.gov* help desk at (800) 518–4726, or by email at support@grants.gov.

4. For technical assistance with GrantSolutions, please contact the GrantSolutions help desk at (866) 577–0771, or by email at help@grantsolutions.gov.

V. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Roselyn Tso,

Director, Indian Health Service.

[FR Doc. 2024–14963 Filed 7–8–24; 8:45 am]

BILLING CODE 4166–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should

notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the National Institute On Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA Board of Scientific Counselors, NIA.

Date: October 22–24, 2024.

Closed: October 22, 2024, 8:00 a.m. to 8:45 a.m.

Agenda: Executive Session; Opening Remarks (Richard J. Hodes, M.D., NIA Director, and Luigi Ferrucci, M.D., Ph.D., Scientific Director, NIA); Board Business (Holly M. Brown-Borg, Ph.D., Acting Chairperson).

Place: National Institutes of Health, Biomedical Research Center, 3C211/Virtual, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Open: October 22, 2024, 8:45 a.m. to 11:30 a.m.

Agenda: Translational Gerontology Branch Overview (Rafael de Cabo, Ph.D., Laboratory Chief, Senior Investigator, TGB Reviewers); Discussion; (Robert Brosh, Ph.D., Senior Investigator, TGB Reviewers); Discussion; Break; (Natan Basisty, Ph.D., NIH Distinguished Investigator, Tenure-Track Investigator, Translational Gerontology Branch); Discussion.

Place: National Institutes of Health, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Closed: October 22, 2024, 11:30 a.m. to 2:00 p.m.

Agenda: Drs. de Cabo, Brosh, and Basisty meet individually and privately with BSC members; Break; Executive Session Luncheon.

Place: National Institutes of Health, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Open: October 22, 2024, 2:00 p.m. to 4:00 p.m.

Agenda: (Isabel Beerman, Ph.D., Earl Stadtman Tenure-Track Investigator, Translational Gerontology Branch Reviewers); Discussion (Rafael de Cabo, Ph.D., Senior Investigator, Translational Gerontology Branch Reviewers); Discussion.

Place: National Institutes of Health, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Closed: October 22, 2024, 4:00 p.m. to 6:00 p.m.

Agenda: Drs. Beerman and de Cabo meet individually and privately with BSC members; Break; Executive Session; Adjourn.

Place: National Institutes of Health, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Closed: October 23, 2024, 8:00 a.m. to 8:30 a.m.

Agenda: Executive Session; Opening Remarks (Richard J. Hodes, M.D., NIA Director, and Luigi Ferrucci, M.D., Ph.D., Scientific Director, NIA); Board Business (Holly M. Brown-Borg, Ph.D., Acting Chairperson).

Place: National Institutes of Health, Biomedical Research Center, 3C211/Virtual, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Open: October 23, 2024, 8:30 a.m. to 11:30 a.m.

Agenda: (Julie Mattison, Ph.D., Staff Scientist 2 (Facility Head), Translational Gerontology Branch Reviewers); Discussion; (Baltimore Longitudinal Study of Aging) (Eleanor Simonsick, Ph.D., Epidemiologist, Translational Gerontology Branch Reviewers); Discussion; Break; Title (Nigel Greig, Ph.D., Senior Investigator, Translational Gerontology Branch Reviewers); Discussion).

Place: National Institutes of Health, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Closed: October 23, 2024, 11:30 a.m. to 1:30 p.m.

Agenda: Drs. Mattison, Simonsick, and Greig meet individually and privately with BSC members; Executive Session Luncheon.

Place: National Institutes of Health, Biomedical Research Center, 3A519/Virtual, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Open: October 23, 2024, 1:30 p.m. to 2:30 p.m.

Agenda: (Luigi Ferrucci, M.D., Senior Investigator, Translational Gerontology Branch Reviewers); Discussion.

Place: National Institutes of Health, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Closed: October 23, 2024, 2:30 p.m. to 6:00 p.m.

Agenda: Dr. Ferrucci meets individually and privately with BSC members; Break; Laboratory/Branch Leadership Overview (Rafael de Cabo, Ph.D., Laboratory Chief, Senior Investigator, Translational Gerontology Branch Discussion Leader); Discussion with the Laboratory/Branch Chief; Leadership Review Discussion; Break; BSC members to meet with Fellows from Laboratory of Behavioral Neuroscience; Executive Session; Adjourn.

Place: National Institutes of Health, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Closed: October 24, 2024, 8:00 a.m. to 8:30 a.m.

Agenda: Executive Session; Opening Remarks (Richard J. Hodes, M.D., NIA Director, and Luigi Ferrucci, M.D., Ph.D., Scientific Director, NIA); Board Business (Holly Brown-Borg, Ph.D., Acting Chairperson).

Place: National Institutes of Health, Biomedical Research Center, 3C211/Virtual,

251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Open: October 24, 2024, 8:30 a.m. to 10:15 a.m.

Agenda: (AD Concept) (Luigi Ferrucci, M.D., Ph.D., Senior Investigator, Translational Gerontology Branch Reviewer); Discussion; (AD Concept) (Keenan Walker, Ph.D., NIH Distinguished Scholar, Tenure-track Investigator of Behavioral Neurosciences Reviewers); Discussion; (AD R&D Concept) (Mustapha Bouhrara, Ph.D., Earl Stadtman Tenure-Track Investigator, Laboratory of Clinical Investigator Reviewers); Discussion; Break.

Place: National Institutes of Health, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Closed: October 24, 2024, 10:15 a.m. to 11:30 a.m.

Agenda: Executive Session Luncheon; Adjourn.

Place: National Institutes of Health, Biomedical Research Center, 3A519/Virtual, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Contact Person: Luigi Ferrucci, M.D., Ph.D., Scientific Director, National Institute on Aging, 251 Bayview Boulevard, Suite 100, Room 4C225, Baltimore, MD 21224, 410–558–8110, LF27Z@NIH.GOV.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 2, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–14968 Filed 7–8–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be held as a virtual meeting and open to the public, as indicated below. Individuals who plan to view the virtual meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should submit a request using the following link: <https://www.nigms.nih.gov/Pages/ContactUs.aspx> at least 5 days prior to the event. The open session will also be videocast, closed captioned, and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov>).

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: September 18, 2024.

Open: 9:30 a.m. to 12:30 p.m.

Agenda: For the discussion of program policies and issues; opening remarks; report of the Director, NIGMS; and other business of the Council.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Virtual Meeting).

Closed: 1:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Erica L. Brown, Ph.D., Director, Division of Extramural Activities, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN24C, Bethesda, MD 20892, 301-594-4499, erica.brown@nih.gov.

Members of the public are welcome to provide written comments by emailing NIGMS_DEA_Mailbox@nigms.nih.gov at least 3 days in advance of the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://www.nigms.nih.gov/About/Council>, where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: July 2, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-14967 Filed 7-8-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Frederick National Laboratory Advisory Council, July 10, 2024, 9:30 p.m. to July 10, 2024, 4:00 p.m., National Institutes of Health, 9606

Medical Center Drive, Rockville, MD 20850 (Virtual Meeting), which was published in the **Federal Register** on June 24, 2024, FR Doc. 2024-13731, 89 FR 52481.

This notice is being amended to change the meeting start time. The meeting will now be held from 1:00 p.m. to 4:00 p.m. instead of from 9:30 a.m. to 4:00 p.m. The meeting is open to the public.

Dated: July 3, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-15014 Filed 7-8-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required).

Date: August 8, 2024.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G58, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Anuja Mathew, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G58, Rockville, MD 20892, (301) 761-6911, Anuja.mathew@niaid.nih.gov.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial

Implementation Cooperative Agreement (U01 Clinical Trial Required).

Date: August 12, 2024.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G58, Rockville, MD 20892, (Video Assisted Meeting).

Contact Person: Anuja Mathew, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G58, Rockville, MD 20892, (301) 761-6911, Anuja.mathew@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 2, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-14966 Filed 7-8-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2024-0591]

National Maritime Security Advisory Committee; August 2024 Meeting

AGENCY: United States Coast Guard, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The National Maritime Security Advisory Committee (Committee) will conduct a series of meetings over two days in conjunction with the 11th Annual Maritime Security West Conference in San Diego, CA to discuss the Committee's open taskings concerning Navigation and Vessel Inspection Circular (NVIC) 03-03 updates, Active Shooter/Active Threat in the Maritime Environment, Unmanned Systems in the Maritime Environment, and Notice of Proposed Rulemaking (NPRM) for Cybersecurity in the Marine Transportation System. All meetings will be open to the public and will not require registration to the Conference.

DATES:

Meetings: The Committee will meet on Tuesday, August 13, 2024, from 2:45 p.m. until 4:45 p.m. Pacific Standard Time (PST), and on Wednesday, August 14, 2024, from 9:00 a.m. until 10:00 a.m.

(PST). Please note these meetings may close early if the Committee has completed its business.

Comments and supporting documentation: To ensure your comments are received by Committee members before the meetings, submit your written comments no later than August 9, 2024.

ADDRESSES: The meetings will be held in the Garden conference room at the Paradise Point Resort, 1404 Vacation Road, San Diego, CA 92109 <https://paradisepoint.com/>. The meetings will also be held virtually. To join the virtual meetings or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. EST on August 9, 2024, to obtain the needed information. The number of virtual lines are limited and will be available on a first-come, first-served basis.

Pre-registration information: Pre-registration is required for attending the virtual meeting. You must request attendance by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below. You will receive a response with attendance instructions.

The National Maritime Security Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodations due to a disability to fully participate, please email Mr. Ryan Owens at ryan.f.owens.uscg.mil or call (202) 302-6565 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meetings as time permits. But, if you want Committee members to review your comment before the meetings, please submit your comments no later than August 9, 2024. We are particularly interested in comments on the topics in the "Agenda" section below. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2024-0591 in the search box and click "Search". Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the individual in the **FOR FURTHER INFORMATION CONTACT** section for alternate instructions. You must include the docket number USCG-2024-0591. Comments received will be posted without alteration at <https://www.regulations.gov> including any

personal information provided. You may wish to review the Privacy and Security Notice found via a link on the homepage <https://www.regulations.gov>, and DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov>, and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, Alternate Designated Federal Officer of the National Maritime Security Advisory Committee, telephone 202-302-6565 or via email at ryan.f.owens@uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of these meetings is in compliance with the *Federal Advisory Committee Act*, (Pub. L. 117-286, 5 U.S.C. ch. 10). The Committee is authorized, by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018*, Public Law 115-282, 132 Stat. 4192, and is codified in 46 U.S.C. 70112. The Committee operates under the provisions of the *Federal Advisory Committee Act* and 46 U.S.C. 15109. The National Maritime Security Advisory Committee provides advice, consults with, and makes recommendations to the Secretary of Homeland Security, via the Commandant of the U.S. Coast Guard, on matters relating to national maritime security.

Agenda

Tuesday, August 13, 2024

- (1) Call to Order.
- (2) Introduction.
- (3) Designated Federal Officer Remarks.
- (4) Roll call of Committee Members and determination of quorum.
- (5) Remarks from Committee Leadership.
- (6) Discussion of Task T-2023-02: Active Shooter/Active Threat in the Maritime Environment.
- (7) Discussion of Task T-2023-03: Unmanned Systems in the Maritime Environment.
- (8) Discussion of Task T-2023-01: Update of NVIC 03-03, "Implementation Guidance for the Regulations Mandated by the Maritime

Transportation Security Act of 2002 for Facilities."

(9) Discussion of Committee Topic Out-Brief: Task T-2024-01: NPRM for Cybersecurity in the Marine Transportation System.

(10) Public Comment Period.

(11) Adjournment of Meeting.

Wednesday, August 14, 2024

(1) Call to Order.

(2) Introduction.

(3) Roll call of Committee Members and determination of quorum.

(4) Committee Open Topic Briefs and Public Discussions and Inputs.

(5) Public Comment Period.

(6) Adjournment of Meeting.

A copy of all meeting documentation will be available at <https://homeport.uscg.mil/NMSAC> no later than August 9, 2024. Alternatively, you may contact Mr. Ryan Owens as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

There will be a public comment period at the end of meetings. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the period allotted, following the last call for comments. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

Dated: July 2, 2024.

Amy M. Beach,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2024-14969 Filed 7-8-24; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2024-0386]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625-0008

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625-0008, Regattas and Marine Parades; without change.

Our ICR describes the information we seek to collect from the public. Before

submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before September 9, 2024.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2024–0386] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public participation and request for comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email hqs-dg-m-cg-61-pii@uscg.mil for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.*, chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection’s purpose, the Collection’s likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek

an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, USCG–2024–0386, and must be received by September 9, 2024.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website’s instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Regattas and Marine Parades.
OMB Control Number: 1625–0008.

Summary: 46 U.S.C. 70041 authorizes the Coast Guard to issue regulations to promote the safety of life on navigable waters during regattas or marine parades. Title 33 CFR 100.15 promulgates the rules for providing notice of, and additional information for permitting regattas and marine parades (marine events) to the Coast Guard.

Need: The Coast Guard needs to determine whether a marine event may present a substantial threat to the safety of human life on navigable waters and determine which measures are necessary to ensure the safety of life during the events. Sponsors must notify the Coast Guard of the efficient means for the Coast Guard to learn of the events and address environmental impacts.

Forms: CG–4423, Application for Marine Event.

Respondents: Sponsors of marine events.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden is 3,349 hours per year. The estimated burden hours are reduced from 3,750 to 3,349 due to the decrease in marine event permit requests in 2020, the increase of respondents submitting applications online as well as increased accuracy in tracking Marine Event Permit activities in the Marine Information for Safety and Law Enforcement (MISLE) database.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: July 1, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–15023 Filed 7–8–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7086–N–20]

60-Day Notice of Proposed Information Collection: Owner’s Certification With HUD Tenant Eligibility and Rent Procedures; OMB Control No.: 2502–0204

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date: September 9, 2024.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 60-day Review—Open for Public Comments” or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department

of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone (202) 402–3400 (this is not a toll-free number) or email: PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; email: Colette.Pollard@hud.gov or telephone (202) 402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Owner Certification with HUD's Tenant Eligibility and Rent Procedures.

OMB Approval Number: 2502–0204.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Form Number: HUD–50059, HUD–50059–A, HUD–9887/9887–A, HUD–27061–H, HUD–90100, HUD–90101, HUD–90102, HUD–90103, HUD–90104, HUD–90105–a, HUD–90105–b, HUD–90105–c, HUD–90105–d, HUD–90106, HUD–91067 and new forms, HUD–90011 (Enterprise Income Verification (EIV) System Multifamily Housing Coordinator Access Authorization Form) and HUD–90012 (Enterprise Income Verification (EIV) System User Access Authorization Form).

Description of the need for the information and proposed use: The Department needs to collect this information in order to establish an applicant's eligibility for admittance to subsidized housing, specify which eligible applicants may be given priority over others, and prohibit racial discrimination in conjunction with selection of tenants and unit assignments. The Department must specify tenant eligibility requirements as well as how tenants' incomes, rents and assistance must be verified and

computed so as to prevent the Department from making improper payments to owners on behalf of assisted tenants. The Department also must provide annual reports to Congress and the public on the race/ethnicity and gender composition of subsidy program beneficiaries. This information is essential to maintain a standard of fair practices in assigning tenants to HUD Multifamily properties.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal Government and State, Local or Tribal Government.

Estimated Number of Respondents: 2,850,895.

Estimated Number of Responses: 3,050,117.

Frequency of Response: 1.

Average Hours per Response: 3.25.

Total Estimated Burden: 1,439,460.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Jeffrey D. Little,

General Deputy Assistant Secretary, Office of Housing.

[FR Doc. 2024–14984 Filed 7–8–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6467–N–01]

Waivers and Alternative Requirements for Community Development Block Grant Disaster Recovery (CDBG–DR) and Community Development Block Grant Mitigation (CDBG–MIT) Grantees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice governs Community Development Block Grant disaster recovery (CDBG–DR) and Community Development Block Grant mitigation (CDBG–MIT) funds awarded under several appropriations acts identified in the Table of Contents. Specifically, this notice includes waivers and alternative requirements for the States of North Carolina and Alaska in response to their submitted requests for waivers and alternative requirements for grants provided under the public laws cited in this notice. As further outlined below, this notice provides a waiver and alternative requirement to the State of North Carolina to align buyout requirements across the State's various CDBG–DR and CDBG–MIT grants and a waiver and alternative requirement to the State of Alaska to increase the limit on planning costs for the State's CDBG–MIT funds. The Department has waived and established similar alternative requirements for other grantees in the past, so the waivers and alternative requirements described in this notice are not unique or precedent setting.

DATES: Applicability Date: July 15, 2024.

FOR FURTHER INFORMATION CONTACT:

Tennille Parker, Director, Office of Disaster Recovery, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202–708–3587 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Email inquiries may be sent to disaster_recovery@hud.gov.

SUPPLEMENTARY INFORMATION:

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- I. Authority To Grant Waivers
- II. Public Law 114–254, 115–31, 115–123,

- 115–254, and 116–20 Waivers and Alternative Requirements
- III. Public Law 116–20 Waiver and Alternative Requirement
- IV. Finding of No Significant Impact (FONSI)

I. Authority To Grant Waivers

Each of the appropriations acts cited in the Table of Contents authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of grant funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. HUD may also exercise its regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5.

All waivers and alternative requirements authorized in this notice are based upon a determination by the Secretary that good cause exists, and that the waiver or alternative requirement is not inconsistent with the overall purposes of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCDA). The good cause for each waiver and alternative requirement is summarized in this notice.

II. Public Law 114–254, 115–31, 115–123, 115–254, and 116–20 Waivers and Alternative Requirements

Waiver and Alternative Requirement for North Carolina's CDBG–DR and CDBG–MIT Buyout Programs (State of North Carolina only).

The Department received a request and justification of good cause from the State of North Carolina to waive the requirement that only real property is eligible for acquisition in buyout activities, which limits the acquisition of manufactured, modular, or mobile housing units (MHUs). Given that the Department has already updated this provision for newer grants, allowing this waiver for North Carolina's older grants would merely align requirements across their grant portfolio. These newer, more flexible requirements published in the **Federal Register** on January 18, 2023 (88 FR 3212) and May 24, 2022 (87 FR 31648) as Appendix B (“the Consolidated Notice”) allow CDBG–DR funds to be used to acquire homes that are MHUs, regardless of whether MHUs are considered real property under state law, as part of the acquisition of an MHU's underlying real property in a buyout activity.

This waiver and alternative requirement, as further described below, applies to the State's CDBG–DR and CDBG–MIT funds allocated to the State under Public Law 114–254, 115–31,

115–123, 115–254, and 116–20. These CDBG–DR and CDBG–MIT funds are subject to the requirements in the **Federal Register** notices published on January 18, 2017 (82 FR 5591), November 21, 2016 (81 FR 83254) (the “November 2016 Notice”), August 7, 2017 (82 FR 36812), January 27, 2020 (85 FR 4681), February 9, 2018 (83 FR 5844) (the “February 2018 Notice”), August 14, 2018 (83 FR 40314), February 19, 2019 (84 FR 4836), June 20, 2019 (84 FR 28848), August 30, 2019 (84 FR 45838) (the “August 2019 Notice”), and January 6, 2021 (86 FR 561) (collectively, the “Prior Notices”).

The Prior Notices require the State to adhere to more stringent requirements for buyout activities undertaken with CDBG–DR and CDBG–MIT funds. Per these requirements, CDBG–DR and CDBG–MIT grantees undertaking buyout activities are required to adhere to the housing acquisition activity requirements at 42 U.S.C. 5305(a)(1) and the associated regulations at 24 CFR 570.201(a), which limit housing acquisition to real property. Further, the Prior Notices define the term “buyout” as the acquisition of property located in a floodway or floodplain that is intended to reduce risk from future flooding or the acquisition of properties in Disaster Risk Reduction Areas (DRRA), as designated by the grantee. Because the Prior Notices do not waive requirements at 42 U.S.C. 5305(a)(1) and the associated regulations at 24 CFR 570.201(a), any buyout program is limited to the acquisition of real property or property considered to be part of a community's permanent housing stock when it includes acquisition of the underlying real property (*i.e.*, land). However, 42 U.S.C. 5305(a)(1) and the associated regulations only permit the use of funds for MHUs under HUD's regulatory oversight, including HUD's Manufactured Home Construction and Safety Standards (“HUD Code”, 24 CFR part 3280) and therefore, exclude MHU's only built to state and local standards.

Beginning with the application of the Consolidated Notice to CDBG–DR funds, HUD waived the requirements at 42 U.S.C. 5305(a) to the extent necessary for the creation of a new eligible activity termed “buyouts.” CDBG–DR grant funds subject to the requirements in the Consolidated Notice may be used for buyout activities defined as the acquisition of properties located in a floodway, floodplain, or other DRRA that is intended to reduce risk from future hazards. This means that CDBG–DR funds, subject to the requirements of the Consolidated Notice, may be used to

acquire MHUs, that can sometimes be treated as personal property or do not meet the HUD Code, as part of the acquisition of an MHU's underlying real property in a buyout activity.

The State of North Carolina has requested a waiver of the requirement that buyouts are limited to the acquisition of real property to allow the State to align its buyout activities with the flexibilities provided in the Consolidated Notice. The waiver and alternative requirement are necessary to allow the State to undertake buyout activities for MHUs that do not qualify as real property or meet the HUD Code to reduce the risk of future flooding to the State's housing stock and the administrative burden of managing different requirements for other buyout activities across its grant portfolio. The waiver and alternative requirement provided herein will help the State promote recovery and mitigation following Hurricanes Matthew and Florence by expanding its buyout programs to include MHUs in a DRRA and enable the State to move more homes and households out of harm's way.

The State's waiver request notes that it is currently implementing its Strategic Buyout Program (SBP) with CDBG–DR and CDBG–MIT funds and that MHUs constitute a significant portion of the housing stock in the State, making up 25 percent of all housing stock in disaster-impacted areas. The State's request also points out the need to include the value of MHUs in buyout offers to equitably serve this population and reduce the risk of future damage to the State's MHU-housing stock, which also tends to be among the most vulnerable.

The State plans to use its CDBG–DR and CDBG–MIT funding under Public Law 114–254, 115–31, 115–123, 115–254, and 116–20 for the implementation of its SBP, which began accepting applications in January 2020. The SBP is a voluntary buyout program that beneficiaries may apply for that provides funding for the purchase of eligible properties in a DRRA, resulting in a deed restriction that limits future development on the acquired parcel. Applicants and properties must meet the eligibility criteria set forth in the State's SBP Manual.

After reviewing the State's request and based on the good cause provided herein, the Department is waiving 42 U.S.C. 5305(a)(1) and the buyout requirements established in the Prior Notices under section VI.B.35 of the November 2016 Notice (81 FR 83271), section VI.B.37 of the February 2018 Notice (83 FR 5863), and section V.B.4 of the August 2019 Notice (84 FR 45864)

for the State of North Carolina's Public Law 114–254, 115–31, 115–123, 115–254, and 116–20 CDBG–DR and CDBG–MIT funds and establishing as an alternative requirement the requirements in section II.B.7. (including II.B.7.a.) of the January 18, 2023, Notice (88 FR 3212). Any buyouts of MHUs under this alternative requirement must include acquisition of the underlying real property.

III. Public Law 116–20 Waiver and Alternative Requirement

Waiver and Alternative Requirement on Limitation of CDBG–MIT Planning Costs (State of Alaska only).

The Department received a request and justification of good cause from the State of Alaska to increase the limit on planning costs from 15 to 48 percent of its CDBG–MIT grant to implement a planning activity in the State's approved Action Plan. This request applies to the State's CDBG–MIT funds under Public Law 116–20 announced in the **Federal Register** notice published on January 6, 2021 (86 FR 561) (the "January 2021 Notice") for a disaster occurring in 2018. The January 2021 Notice included waivers and alternative requirements for grantees that received a CDBG–MIT allocation under Public Law 115–123 or 116–20 and required grantees to adhere to the relevant requirements of the **Federal Register** notices published on August 30, 2019 (84 FR 45838) (the "August 2019 Notice") and on September 28, 2020 (85 FR 60821).

The State is requesting that the Department modify paragraph V.A.8.b.(1) of the August 2019 Notice to accommodate its proposed planning activity. Specifically, the State is requesting the ability to use \$1,086,800, or approximately 48 percent, of its CDBG–MIT grant amount to upgrade the Municipality of Anchorage's local vertical datum reference system to the National Spatial Reference System (NSRS). However, paragraph V.A.8.b.(1) of the August 2019 Notice and Section II.B. of the January 2021 Notice provide an alternative requirement that limits CDBG–MIT grantees to spending a maximum of 15 percent of their total grant amount or \$750 million, whichever is less, on planning costs.

The National Oceanic and Atmospheric Administration (NOAA) defines and manages the NSRS through its National Geodetic Survey. The NSRS serves as a consistent coordinate system that defines latitude, longitude, height, scale, gravity, and orientation throughout the United States. The NSRS includes a network of permanently marked points; a consistent, accurate, and up-to-date national shoreline; a

network of Continuously Operating Reference Stations (CORS) which supports three-dimensional positioning activities; and a set of accurate models describing dynamic, geophysical processes that affect spatial measurements.

The Municipality of Anchorage's existing network of vertical datum monuments (benchmarks) is not tied to the NSRS, references a superseded local mean sea level, has minimal compatibility with modern survey techniques that rely heavily on the use of GPS equipment, and is generally outdated and in poor condition. For the Municipality to adopt the NSRS datum, additional funding is needed to create an inventory of existing benchmarks, identify existing benchmarks that may be used in conjunction with the NSRS, establish new benchmarks in areas where few monuments exist, and conduct a project to establish NSRS positions on new and existing benchmarks referencing the Municipality of Anchorage datum. The State's planning activity will verify and update the GPS coordinates of all benchmarks within the Municipality of Anchorage, which is a National Geodetic Survey requirement for communities to participate in the modernized NSRS.

After consulting with the Municipality of Anchorage, the Office of Emergency Management, the Office of Economic and Community Development (MOA/OECD), and other Federal partners, and reviewing its Mitigation Needs Assessment, the State determined it is critical to allocate funds to upgrade the local vertical datum reference system to the NSRS in order to support FEMA in remapping the Municipality's Special Flood Hazard Areas (SFHAs). Local and State Hazard Mitigation Plans identify flood risk as one of the most urgent potential hazards in the Municipality. However, existing flood hazard maps are inaccurate, which limits the Municipality's ability to mitigate risk through land-use planning, infrastructure, building codes, and other measures. Flood hazard and other spatial mapping currently rely on the local vertical datum reference system, which the November 30, 2018, earthquake made more inaccurate. Upgrading the local vertical datum reference system to the NSRS will enable coordination with FEMA to update the Municipality's SFHAs to accurately convey flood risks within the community, making it a strategic and high-impact project to mitigate disaster risks and reduce future losses.

Further, FEMA has adopted the NSRS as the official datum of the National

Flood Insurance Program and is moving to transition all Flood Insurance Studies and Flood Insurance Rate Maps (FIRMs) to the NSRS. The Municipality's adoption of the NSRS will conform to FEMA standards, increase the alignment of federally funded geospatial data sets with local projects, enable the use of GPS technology in local surveying, and provide specifications for not only updating flood maps, but also tsunami warning systems and other disaster resources.

To reduce the risks and prioritize the protection of low- and moderate-income (LMI) persons, the State of Alaska also verified that at least 50 percent of its CDBG–MIT award will continue to be used exclusively for activities that benefit LMI persons through its Tsunami Alert System and Home Flood Mitigation Program.

The August 2019 Notice and the January 2021 Notice waive section 106(d) of the HCDA (42 U.S.C. 5306(d)) and 24 CFR 570.489(a)(1)(i) and (iii) and create an alternative requirement that limits CDBG–MIT grantees to spending a maximum of 15 percent of their total grant amount or \$750 million, whichever is less, on planning costs.

Based on the reasons stated above, HUD has determined that good cause exists to modify the alternative requirement in paragraph V.A.8.b.(1) of the August 2019 Notice and the third paragraph of Section II.B. of the January 2021 Notice to the extent necessary to permit eligible planning expenses up to 48 percent of the State's CDBG–MIT grant amount. Additionally, to ensure that the State prioritizes activities benefitting LMI persons as described in its approved CDBG–MIT Action Plan, the Department will continue to require that at least 50 percent of the State's CDBG–MIT funds be expended on programs and projects that will benefit LMI persons.

As a reminder, the State must continue to limit its administrative costs for the CDBG–MIT grant to 5 percent of its total grant award and 5 percent of program income generated by the grant, as provided in Public Law 116–20, the August 2019 Notice, and the January 2021 Notice.

IV. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available online on HUD's CDBG–DR website at https://www.hud.gov/program_offices/

comm_planning/cdbg-dr and for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number).

HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Marion M. McFadden,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2024-15055 Filed 7-8-24; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_OR_FRN_MO4500180347]

Notice of Public Meeting for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Southeast Oregon Resource Advisory Council (RAC) will meet as follows.

DATES: The Southeast Oregon RAC will meet on August 12, 2024, from 9 a.m. to 12 p.m. noon Pacific Time (PT) and September 24, 2024, from 9 a.m. to 4:30 p.m. PT. The RAC will participate in a field tour on September 25, 2024, from 9 a.m. to 12 p.m. PT.

ADDRESSES: The August 12, 2024, meeting will be held virtually. The September 24, 2024, meeting will be held at the BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon, 97738, and a virtual participation option will be available. The September 25, 2024, field tour will commence and conclude at the BLM's Oregon Wild Horse Corral, 26755 Highway 20 W, Hines, Oregon 97738. Instructions for

participating virtually, final agendas, and additional meeting details will be posted at least 10 days in advance of the meeting on the RAC's web page: <https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/southeast-oregon-rac>. Previous meeting minutes, membership information, and upcoming agendas are also available on this web page.

FOR FURTHER INFORMATION CONTACT: Lisa McNee, Public Affairs Officer, 1301 South G Street, Lakeview, OR 97630; (541) 219-9180; lmcnee@blm.gov. Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their countries to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Southeast Oregon RAC is chartered, and the 15 members are appointed by the Secretary of the Interior. Their diverse perspectives represent interests associated with the commercial timber industry, Federal grazing permits, energy and mineral development, recreation, wild horse and burro management, environmental organizations, and people who represent Indian Tribes, academia, and hold elected office. The RAC serves in an advisory capacity to BLM and U.S. Forest Service officials concerning planning and management of public lands and national forest resources located, in whole or part, within the boundaries of the BLM's Vale, Burns, and Lakeview Districts and the Fremont-Winema and Malheur National Forests. All meetings are open to the public in their entirety.

The August 12, 2024, agenda includes a review and RAC recommendations on the Lakeview Resource Management Plan Amendment. The September 24, 2024, agenda items include presentations on the Conservation and Landscape Health Rule, the Blueprint for 21st Century Outdoor Recreation, and technology and fuels monitoring. The September 25, 2024, field tour to the BLM's Oregon Wild Horse Corral will provide an opportunity to view wild horses and burros gathered from Oregon, California, and Arizona that are being prepared for adoption. Members of the public who wish to participate in the field tour must provide their own transportation and meals.

Requests for Accommodations: Please make requests in advance for sign language interpreter services, assistive

listening devices, language translation services, or other reasonable accommodations. We ask that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least 14 business days prior to the meeting to give the Department of the Interior sufficient time to process the request. All reasonable accommodation requests are managed on a case-by-case basis.

Public comment periods will be offered on August 12 and September 24. Depending on the number of persons wishing to speak and the time available, the amount of time for oral comments may be limited. Information to be distributed to the RAC is requested before the start of each meeting. Written comments can be mailed in advance to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. All comments received will be provided to the RAC. Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

(Authority: 43 CFR 1784-2)

James Forbes,

Lakeview District Manager.

[FR Doc. 2024-15050 Filed 7-8-24; 8:45 am]

BILLING CODE 4331-24-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AZ_FRN_MO4500178910]

Notice of Realty Action: Recreation and Public Purposes Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM), Hassayampa Field Office, examined two parcels consisting of approximately 640 acres of public land and determined that the parcels are suitable for classification for lease and/or conveyance under the provisions of the Recreation and Public Purpose Act, as amended (R&PP). The R&PP allows local governments to lease, develop, and subsequently acquire public lands for recreational uses when the proposed use complies with local government and

BLM land use planning. The City of Buckeye (Applicant) filed an application to develop the land as a local park that will help meet future expanding recreational needs in Buckeye, Arizona. The BLM is seeking public comments as to the suitability of the lands for lease and/or conveyance under the R&PP Act.

DATES: Interested parties may submit written comments regarding this proposed classification for lease and/or conveyance on or before August 23, 2024.

ADDRESSES: Mail written comments to the BLM Hassayampa Field Office, Ryan Randell, Land Law Examiner, 2020 East Bell Road, Phoenix, Arizona 85022.

FOR FURTHER INFORMATION CONTACT: Ryan Randell, Land Law Examiner, at the above address, by telephone at 602-867-5400, or by email at rrandell@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The R&PP project is consistent with the BLM Bradshaw-Harquahala Resource Management Plan dated April 22, 2010. The two parcels are 320 acres each, which would add a total of 640 acres to the adjacent 8,675-acre Skyline Regional Park. The subject parcels are located within the White Tank Mountains, within the city of Buckeye, north of Interstate 10, and are legally described as:

Gila and Salt River Meridian, Arizona

T. 2 N. R. 3 W.,
Sec. 14, E $\frac{1}{2}$;
Sec. 26, N $\frac{1}{2}$.

The areas described aggregate 640 acres, more or less, according to the official plat of the survey of the said land on file with the BLM.

Plans for the R&PP project consist of trails connecting to the existing and planned Skyline Regional Park trail network with trailhead parking, rest nodes with restrooms, shade structures, seating and site furnishings, signage, and access roads from the future Verrado road network. The trails are anticipated to be single-track, shared-use, non-motorized trails for hiking, mountain biking, and equestrian use. Long term future improvements could include a bike skills area that would utilize the varied terrain of the White Tank Mountains foothills to offer a

variety of bike recreation opportunities, such as pump track style courses, BMX challenge courses, flow trails, mountain bike trails ranging in difficulty, and training areas for beginners.

The conveyance document, if and when issued, would be subject to the provisions of the R&PP Act, to all applicable regulations of the Secretary of Interior, and the following terms and conditions:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the land, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior.

3. Subject to valid existing rights.

4. An appropriate indemnification clause protecting the United States from claims arising out of the use, occupancy, or occupations on the lands.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the R&PP Act, and leasing under the mineral and geothermal leasing laws.

Interested parties may submit comments to this Notice of Realty Action (NORA) involving the classification of lands as being suitable for further development of Skyline Regional Park, whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs. Comments to this NORA must be submitted in writing and sent to the BLM Hassayampa Field Office on or before the date listed under the **DATES** section above.

All comments received from publication of this notice will then be considered for analysis in the Environmental Assessment (EA) for this project. Once the EA is completed, it will be made available on the BLM National NEPA Register (eplanning website) at <https://eplanning.blm.gov>. Interested parties on file with the BLM, including anyone that submitted a comment to the NORA, will be sent a notice that the EA is available for review. Beginning the day that the EA is published on the eplanning website, the public will be given an additional 30 days to submit comments.

Comments during the 30-day EA comment period may include concerns over the specific use proposed in the application, the Plan of Development (POD), and whether the BLM followed proper administrative procedures. All comments during the NEPA comment period must be submitted directly onto the eplanning website. Comments received during the EA comment period will be considered in reaching a decision regarding leasing and/or conveying the lands under the R&PP Act. Other pertinent information related to the project such as the POD and maps will also be made available for review on the eplanning website.

Any adverse comments received will be considered protests and will be reviewed by the BLM Arizona State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments to the NORA, the classification of lands will become effective 60 days from the date of publication of this notice in the **Federal Register**. In the absence of any adverse comments to the EA, a decision will be made in response to the R&PP application and will be posted on the eplanning website.

Before including your address, phone number, email, address, or other personal identifying information in any of your comments, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2741.5.

James Holden,

Acting Field Manager, BLM Hassayampa Field Office.

[FR Doc. 2024-14943 Filed 7-8-24; 8:45 am]

BILLING CODE 4331-12-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NRNHL-DTS#-38255;
PPWOCRADIO, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before June 29, 2024, for listing or

related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by July 24, 2024.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line “Public Comment on <property or proposed district name, (County) State>.” If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov*, 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before June 29, 2024. Pursuant to section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

KANSAS

Ford County

Fort Dodge—Junior Officers’ Quarters, (Santa Fe Trail MPS), 266 Custer Street, Fort Dodge, MP100010625

Neosho County

Sturdevant Hardware Building, 29–31 W Main, Chanute, SG100010601

Wabaunsee County

Pearl Opera House, (Theaters and Opera Houses of Kansas MPS), 601 Main Street, Alta Vista, MP100010620

MICHIGAN

Wayne County

United States Post Office Plymouth Station, 860 Penniman Avenue, Plymouth, SG100010627

MINNESOTA

Crow Wing County

Cuyuna Village Hall, 24945 Minnesota Avenue, Cuyuna, SG100010629

St. Louis County

United Protestant Church, 830 88th Avenue West, Duluth, SG100010635

NEW YORK

Albany County

Selfridge & Langford Building, 97–101 Central Avenue, Albany, SG100010630

Cattaraugus County

Nies Block, 63–87 Main Street, Salamanca, SG100010608

Erie County

Austin Street Police Athletic League (PAL) Center, (Black Rock Planning Neighborhood MPS), 348 Austin Street, Buffalo, MP100010612

Franklin County

Berkeley Square Historic District (Boundary Increase), Blocks roughly bounded by Broadway, Main, Olive, and Woodruff Sts., Saranac Lake vicinity, BC100010618

Genesee County

Oakfield High School, 1 North Pearl Street, Oakfield, SG100010613

Herkimer County

Dolgeville Universalist Church, 78 South Main St., Dolgeville, SG100010614

Monroe County

Wimbledon Road Historic District, 201–300 Wimbledon Road, Rochester vicinity, SG100010617

New York County

Audubon Park Historic District, Generally, Broadway, Riverside Drive, Riverside Drive West, West 155th, 156th, 157th, and West 158th Street, and Edward M. Morgan Place, New York, SG100010615

Onondaga County

National Casket Company Building, 719 East Genesee Street, Syracuse, SG100010632

Orange County

Black Walnut Island 2, Address Restricted, Pine Island vicinity, SG100010633

Rensselaer County

Neemes Foundry, 206 First Street, Troy, SG100010631

St. Lawrence County

Hale Cemetery, 3366 County Route 47, Norfolk, SG100010607

VIRGIN ISLANDS

St. Croix District

Kingshill Lutheran Church, 18–AA Upper Bethlehem, St. Croix, Frederiksted vicinity, SG100010640

Holy Cross Episcopal Church, 1 Estate Upper Love, Frederiksted vicinity, SG100010641

Sprat Hall Historic District, 29 Sprat Hall, Frederiksted vicinity, SG100010646

La Grange Historic District, Parcels 74, 75, 242, 40, 64 Estate La Grange, Frederiksted vicinity, SG100010647

St. John District, East End Schoolhouse: St. John US Virgin Islands, 6–K Hansen Bay, St. John vicinity, SG100010648

Benjamin Franklin School, 2 Estate Emmaus, Coral Bay, SG100010650

St. Thomas District

Barracks No. 2, (World War II Naval and Military Operations in the U.S. Virgin Islands, 1935–1950 MPS), 8189 Subbase Road, Charlotte Amalie vicinity, MP100010644

Evelyn E. Marcelli Elementary School, Haabets Gade 4, Charlotte Amalie vicinity, SG100010645

WEST VIRGINIA

Mercer County

Bluefield Green Book Historic District, (Green Book Sites in West Virginia MPS), 1039–1047 Wayne Street, Bluefield, MP100010606

WISCONSIN

Waupaca County

William H. Hatten Recreation Park, 801 Werner-Allen Road, New London, SG100010639

An owner objection received for the following resource(s):

MINNESOTA

Winona County

Holy Trinity School, 101 Broadway Street, Rollingstone, SG100010636

A request for removal has been made for the following resource(s):

MICHIGAN

Wayne County

Mellus Newspapers Building, 1661 Fort St., Lincoln Park, OT05000716

St. Thomas the Apostle Catholic Church and Rectory, 8363–8383 Townsend Ave., Detroit, OT89000785

An additional documentation has been received for the following resource(s):

NEW YORK

Franklin County

Berkeley Square Historic District (Additional Documentation), 30–84 Main St., 2–29 Broadway, Saranac Lake, AD88000114

New York County

Greenwich Village Historic District (Additional Documentation), Roughly bounded by W 13th St., St. Luke’s Pl.,

University Pl., and Washington St., New York, AD79001604

TENNESSEE

Montgomery County

Rexinger, Samuel, House (Additional Documentation), 813 College Street, Clarksville, AD77001284

Smith-Hoffman House (Additional Documentation), 149 Plum Street, Clarksville, AD77001285

VIRGIN ISLANDS

St. Thomas District

Hassel Island (Additional Documentation), S of Charlotte Amalie in St. Thomas Harbor, Charlotte Amalie vicinity, AD76001862

Authority: Section 60.13 of 36 CFR part 60

Sherry A. Frear,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

[FR Doc. 2024-14994 Filed 7-8-24; 8:45 am]

BILLING CODE 4312-52-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1406]

Certain Memory Devices and Electronic Devices Containing the Same; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 3, 2024, under section 337 of the Tariff Act of 1930, as amended, on behalf of MimirIP LLC of Dallas, Texas. Supplements to the complaint were filed on June 21, 2024, and June 24, 2024. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain memory devices and electronic devices containing the same by reason of the infringement of certain claims of U.S. Patent No. 7,468,928 (“the ‘928 patent”); U.S. Patent No. 7,579,846 (“the ‘846 patent”); and U.S. Patent No. 8,036,053 (“the ‘053 patent”). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained

therein, may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>.

FOR FURTHER INFORMATION CONTACT:

Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10 (2024).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 3, 2024, *ordered that—*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–3 of the ‘928 patent; claims 1–28 of the ‘846 patent; and claims 1–9 of the ‘053 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is “certain DRAM memory, DRAM modules, DRAM Components, and Design-in DRAM; and smart devices, augmented and virtual reality products, automotive computers, automotive media control units, computers, laptops, desktops, workstations, tablets, and servers containing the same”;

(3) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall

take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

MimirIP LLC, 9330 LBJ Freeway, Suite 900, Dallas, TX

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Micron Technology Inc., 6360 South Federal Way, Post Office Box 6, Boise ID 83716

Hewlett Packard Enterprise Co., 1701 E Mossy Oaks Rd., Spring, TX 77389

HP, Inc., 1501 Page Mill Road, Palo Alto, CA 94304

Kingston Technology Company, Inc., 17600 Newhope Street, Fountain Valley, CA 92708

Lenovo Group Limited, 23rd Floor, Lincoln House, Taikoo Place, 979 King’s Road, Quarry Bay, Hong Kong, S.A.R. of China

Lenovo (United States) Inc., 8001 Development Drive, Morrisville, NC 27560

Tesla Inc., 1 Tesla Road, Austin, TX 78725

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 3, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–15059 Filed 7–8–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–712–715 and 731–TA–1679–1682 (Final)]

Ferrosilicon From Brazil, Kazakhstan, Malaysia, and Russia; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–712–715 and 731–TA–1679–1682 (Final) pursuant to the Tariff Act of 1930 (“the Act”) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of ferrosilicon from Russia, provided for in subheadings 7202.21 and 7202.29 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (“Commerce”) to be subsidized by the Government of Russia and alleged to be sold in the United States at less than fair value. Determinations with respect to imports of ferrosilicon from Brazil, Kazakhstan, and Malaysia, alleged to be subsidized by the Governments of Brazil, Kazakhstan, and Malaysia and alleged to be sold in the United States at less than fair value, are pending.

DATES: June 28, 2024.

FOR FURTHER INFORMATION CONTACT:

Lawrence Jones ((202) 205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as covering “all forms and sizes of ferrosilicon, regardless of grade, including ferrosilicon briquettes. Ferrosilicon is a ferroalloy containing by weight 4 percent or more iron, more than 8 percent but not more than 96 percent silicon, 3 percent or less phosphorus, 30 percent or less manganese, less than 3 percent magnesium, and 10 percent or less any other element. The merchandise covered also includes product described as slag, if the product meets these specifications. Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by performing any grinding or any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the ferrosilicon. Ferrosilicon is currently classifiable under subheadings 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope remains dispositive.”

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Act (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits provided by the Government of Russia, which constitute subsidies within the meaning of § 703 of the Act (19 U.S.C.

1671b), are being provided to manufacturers, producers, or exporters of ferrosilicon in Russia, and that such products are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). Determinations with respect to imports of ferrosilicon from Brazil, Kazakhstan, and Malaysia, alleged to be subsidized by the Governments of Brazil, Kazakhstan, and Malaysia and alleged to be sold in the United States at less than fair value, are pending. The investigations were requested in petitions filed on March 28, 2024, by Ferrolobe USA, Inc., Beverly, Ohio and CC Metals and Alloys, LLC, Calvert City, Kentucky.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission’s Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission’s rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Please note the Secretary’s Office will accept only electronic filings during this time. Filings must be made through the Commission’s Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission’s rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice.

Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on August 19, 2024, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Wednesday, September 4, 2024. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Tuesday, August 27, 2024. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the investigations, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID-19 test result may be submitted by 3:00 p.m. the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at <https://www.usitc.gov/calendarpad/calendar.html>.

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on Tuesday, September 3, 2024. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00 p.m. on Tuesday, September 3, 2024 (one business day prior to hearing). Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit

a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is August 26, 2024. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is September 11, 2024. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before September 11, 2024. On October 1, 2024, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 3, 2024, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

Issued: July 3, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–15058 Filed 7–8–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modification of Consent Decree Under the Clean Water Act and Oil Pollution Act

On June 29, 2024, the Department of Justice lodged with the United States District Court for the Western District of Michigan a proposed Eighth Modification of Consent Decree (“Eighth Modification”) in the lawsuit entitled *United States v. Enbridge Energy, Limited Partnership, et al.*, Civil Action No. 1:16–cv–914.

On May 23, 2017, the United States District Court for the Western District of Michigan approved and entered a Consent Decree that resolved specified claims asserted by the United States against Enbridge Energy, Limited Partnership and eight affiliated entities (“Enbridge”) under the Clean Water Act and Oil Pollution Act arising from two separate 2010 oil spills resulting from failures of Enbridge oil transmission pipelines near Marshall, Michigan and Romeo, Illinois. The complaint filed by the United States alleged that Enbridge's pipelines had unlawfully discharged oil into waters of the United States and sought civil penalties, recovery of removal costs, and injunctive relief. The Consent Decree established various requirements applicable to a network of 14 pipelines that comprise Enbridge's Lakehead System—including dig selection criteria governing excavation, repair or mitigation, and imposition of interim pressure restrictions for various features, such as cracks, that are detected through In-Line Inspections (“ILI”) of such pipelines. The proposed Modification would revise provisions of the Consent Decree relating to the investigation and repair of “circumferential cracks”—*i.e.*, cracks that are predominantly oriented around the circumference of the pipeline as opposed to cracks oriented along the length (or central axis) of the pipeline.

First, the proposed Eighth Modification would require Enbridge to investigate circumferential crack features in four pipelines. In three pipelines (Lines 2, 62 and a portion of Line 1), Enbridge will deploy ILI tools that are specifically designed to identify and measure circumferential crack features. In a fourth pipeline (Line 4),

Enbridge will undertake a newly-created program to excavate and examine a minimum of ten pipe joints that are likely to contain the most severe circumferential crack features. Based upon the results of this investigation, Enbridge will attempt to pass an agreed-upon statistical test for determining whether unexcavated portions of the pipeline are likely to contain any Circumferential Cracks that require repair.

Second, the proposed Eighth Modification would revise the methods used by Enbridge for assessing whether a circumferential crack must be excavated and repaired. The new methods are tailored to address the unique threats posed by circumferential crack features, taking into account all stresses and loading conditions that may cause a circumferential crack to grow and ultimately fail. The proposed Eighth Modification would require Enbridge to apply these new assessment methods not only to circumferential crack features in Lines 1, 2, 4, and 62 that Enbridge would be required to investigate under the proposed Eighth Modification, but also those circumferential crack features in Lines 5, 6A, and 10 that Enbridge previously discovered through past ILIs but that Enbridge has not yet excavated and repaired.

Third, the proposed Eighth Modification adjusts certain requirements relating to the repair and mitigation of Circumferential Crack features. The proposed Eighth Modification allows more time for the excavation and repair of Circumferential Cracks than is generally afforded for the excavation and repair of axially-aligned cracks (*i.e.*, a crack oriented in parallel to the flow of oil through the pipeline). Further, Enbridge will not be required, in all instances, to limit operating pressure in a pipeline until such repairs are completed. Rather, Enbridge will be required to establish an interim pressure restriction only if a Circumferential Crack is growing at a rate that poses a threat to the integrity of the pipeline.

Fourth, the proposed Eighth Modification would eliminate two requirements in the Consent Decree relating to Circumferential Cracks. In contrast to axially-aligned cracks, circumferential crack features that do not require excavation and repair would not be evaluated to determine their remaining life (*i.e.*, the estimated time remaining before a feature may fail either by leaking or rupturing). In addition, the proposed Eighth Modification would not impose any requirements on Enbridge with respect to the future deployment of ILI tools to

re-inspect circumferential crack features in Lines 1, 2, 4, 5, 6A, 10, and 62.

Finally, the proposed Eighth Modification would revise the Termination Section of the Consent Decree, enabling Enbridge to seek early termination of certain requirements relating to circumferential crack features. The proposed Eighth Modification would require Enbridge to incorporate the circumferential crack remedial program into its operating manual, which is enforceable by the Pipeline and Hazardous Materials Safety Administration (“PHMSA”). Once the manual is revised, Enbridge may request “Phase 1” Final Termination, which, upon approval by EPA, will terminate all aspects of the Consent Decree other than two discrete programs relating to circumferential cracks. Phase 2 Final Termination will occur once the United States files notice with the Court confirming that Enbridge has fully implemented these two remaining programs.

The publication of this notice opens a period for public comment on the proposed Eighth Modification of Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Enbridge Energy, Limited Partnership, et al.*, D.J. Ref. No. 90–5–1–1–10099. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Eighth Modification may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. If you require assistance accessing the proposed Eighth Modification, you may request assistance by email or by mail to the address provided above for submitting comments.

Laura A. Thoms,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–14965 Filed 7–8–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2024–03; Application Number L–11989]

Exemption for Certain Prohibited Transactions Involving the Association of Washington Business (AWB) HealthChoice Employee Benefits Trust Located in Olympia, Washington

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of exemption.

SUMMARY: This document gives notice of an individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA). The exemption permits the trustee of a plan funded by the AWB HealthChoice Employee Benefits Trust (the Arrangement), to hire entities affiliated with AWB to provide services to the Arrangement for a fee subject to conditions designed to safeguard the interests of the plan and its participants and beneficiaries.

DATES: Exemption date: This final exemption will be in effect as of July 9, 2024.

FOR FURTHER INFORMATION CONTACT:

Susan Wilker, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8557 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: AWB, Forterra and ProPoint (the Applicants) requested an exemption pursuant to ERISA section 408(a) and supplemented the request with certain additional information (collectively, this information is referred to as “the Application”).¹ On June 14, 2023, the Department published a notice of proposed exemption in the **Federal Register** at 88 FR 38896 (Proposed Exemption).

Based on the record and representations of the Applicants, the Department has determined to grant the Proposed Exemption with the modifications discussed below. This exemption provides only the relief specified herein and does not provide relief from violations of any law other

¹ The procedures for requesting an exemption are set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under the Code Section 4975(c)(2) to the Secretary of Labor. Accordingly, the Department grants this exemption under its sole authority.

than the prohibited transaction provisions of ERISA.

As discussed below, the Department makes the requisite findings under ERISA Section 408(a) based on the Applicants' adherence to all the conditions of the exemption. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken individually and as a whole, necessary for the Department to grant the relief requested by the Applicants. Absent these conditions, the Department would not have granted this exemption.

Background

AWB HealthChoice Employee Benefits Trust

As described in the proposal, Association of Washington Business (AWB) members can choose to offer medical, dental, vision, and life insurance benefits to their eligible employees by participating in a fully-insured ERISA-covered employee welfare benefit plan (the Plans). The Plans are funded through multiple industry trusts (Industry Trusts) that comprise the AWB HealthChoice Employee Benefits Trust. The trustee for each Industry Trust (the Trustee) is a representative (e.g., employee, officer, or director) of an employer participating in the Plan (Participating Employer) that is in a specific industry classification.² The Trustees are Plan fiduciaries under ERISA, responsible for performing a wide range of activities in administering the Plans, including selecting service providers.

Bona Fide Groups or Associations Under the Department's Sub-Regulatory Guidance

Under ERISA section 3(1), an employee welfare benefit plan must be established or maintained by an "employer," an "employee organization," or both.³ ERISA section 3(5) defines an "employer" as ". . . any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity." The Department's guidance in this area is provided primarily in several advisory opinions it has issued over more than three decades (the sub-regulatory guidance).⁴ In the sub-regulatory

guidance, the Department expressed its position regarding whether a particular group or association is a "bona fide group or association" that is permitted to sponsor a multiple employer welfare plan on behalf of its employer members.⁵ In making this determination, the Department has consistently focused on three criteria: (1) whether the group or association has business or organizational purposes and functions unrelated to the provision of benefits (the "business purpose" standard); (2) whether the employers share some commonality of interest and genuine organizational relationship unrelated to the provision of benefits (the "commonality" standard); and (3) whether the employers that participate in a benefit program, either directly or indirectly, exercise control over the program, both in form and substance (the "control" standard).

The Applicants represent that each Industry Trust association is an "employer" within the meaning of ERISA section 3(5). The Applicants further represent that the Arrangement is sponsored by "one or more bona fide associations" as defined in the Department's sub-regulatory guidance.⁶ The Department has relied on these representations to grant this exemption, and this background discussion does not reflect factual findings or opinions of the Department regarding whether the Arrangement is sponsored by "one or more bona fide associations" or any other representations made by the Applicants.

Although this exemption was requested by AWB, Forterra and ProPoint, the prohibited transaction relief it grants only extends to the Plan Trustees; the exemption provides no relief for AWB or its affiliates. AWB, Forterra and ProPoint represent that (i) the Plans are established or maintained by the Industry Trusts associations that act indirectly in the interests of the Participating Employers, and (ii) the

and associations that may sponsor a single ERISA-covered group health plan. The rule was vacated by court order in 2019 (*State of New York v. United States Department of Labor*, 363 F.Supp.3d 109, (March 28, 2019)), and the Department recently proposed to rescind the rule (88 FR 87968 (Dec. 20, 2023)).

⁵ See, e.g., Advisory Opinions Nos. 94-07A (Mar. 14, 1994), 95-01A (Feb. 13, 1995), 96-25 (Oct. 31, 1996), 2001-04A (Mar. 22, 2001), 2003-13A (Sept. 30, 2003), 2003-17A (Dec. 12, 2003), 2007-06A (Aug. 16, 2007), 2012-04A (May 25, 2012), and 2019-01A (July 8, 2019). See also Department of Labor Publication, "Multiple Employer Welfare Arrangements Under ERISA, A Guide to Federal and State Regulation," at www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/mewa-under-erisa-a-guide-to-federal-and-state-regulation.pdf.

⁶ The Applicant made these representations in a draft trust agreement provided to the Department.

Trustees of the Industry Trusts have sole fiduciary authority over the selection of service providers for the Plans.

Prohibited Transactions

ERISA prohibits fiduciaries with respect to employee welfare benefit plans from engaging in certain transactions, including transactions that involve self-dealing, unless an exemption applies.⁷ In this case, the Applicants represent that the Trustees are vested with fiduciary authority to select service providers for the Plans. Because of the Plans' close relationship with AWB (e.g., the Plans are available only to AWB member employers, and AWB affiliates Forterra and ProPoint have provided services to the Plans since their inception), the Department is concerned that Forterra's and ProPoint's relationship with AWB could affect the Trustees' exercise of their best judgment as fiduciaries with respect to the selection of plan service providers in the absence of appropriate safeguards.

The Department has authority under ERISA section 408(a) to grant an administrative exemption from the prohibited transaction rules requested by the Applicant only if the Department finds that the exemption is (i) administratively feasible, (ii) in the interests of affected plans and of their participants and beneficiaries, and (iii) protective of the rights of such participants and beneficiaries. As discussed below, this exemption includes conditions that are designed to ensure that each Trustee is fully informed of their fiduciary obligations with respect to the Plan, possesses sole fiduciary authority over Plan service provider selection and monitoring, and exercises their authority in accordance with ERISA's fiduciary standards.

The exemption provides relief from ERISA section 406(b)(1), which prohibits fiduciary self-dealing. Each Trustee is a fiduciary, subject to the provisions of ERISA sections 403 and 404. This means that each Plan's assets must be used for the exclusive purpose of providing benefits to participants and beneficiaries covered by that Plan and defraying reasonable expenses of administering the Plan. The Trustees that are part of the Arrangement are permitted to confer with each other and collectively enter into service provider agreements or otherwise act collectively on behalf of all the Plans. However, each Trustee is a fiduciary with respect to the Plan for which it is a Trustee. Each Plan must always have a Trustee in order to satisfy the conditions of the exemption, and that Trustee may not

² The industry classifications are: manufacturing, professional services, retail/wholesale, hospitality, construction, agriculture, communications, technology, and transportation.

³ ERISA section 3(1).

⁴ In 2018, the Department issued a rule (29 CFR 2510.3-5), which broadened the types of groups

⁷ See ERISA section 406.

permit the assets, management, or operation of any Plan to be used to benefit participants and beneficiaries of another Plan. The exemption does not provide relief from ERISA section 406(b)(2), which prohibits fiduciaries from acting on behalf of a party whose interests are adverse to the interests of the Plan. This ensures that Trustees may not act on behalf of anyone with interests adverse to a Plan and its participants and beneficiaries.

The exemption does not provide relief from ERISA section 406(a)(1)(C), which prohibits fiduciaries from engaging parties in interest as service providers. That relief is available under the statutory exemption provided in ERISA section 408(b)(2), and the Department is not determining whether the conditions of ERISA section 408(b)(2), including reasonable compensation, have been met. To the extent the Trustees fail to comply with ERISA section 408(b)(2) in connection with hiring AWB or any of its affiliates as service providers to the Plans, for example, by paying fees that exceed reasonable compensation, AWB or its affiliates may be subject to liability for knowing participation in a prohibited transaction.⁸

Written Comments Received

In the proposed exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the Proposed Exemption. All comments and requests for a hearing were due to the Department by August 14, 2023.⁹ The Department received three written comments that raised several issues. One of these comments was from the Applicants who raised four technical issues involving (1) direct fees, (2) related fee increases, (3) AWB membership and (4) the disclosure required in the Proposed Exemption. The Department responds to the material issues and the material

information provided in the comments below.¹⁰

In granting this exemption, the Department has relied on the representations of the Applicants. If any material statement in the Application, final exemption or the Applicant's comment is not, or may no longer be, completely and factually accurate, the Applicants and recipients of the exemptive relief provided herein must immediately alert the Department.¹¹

Comment From the Applicant

Comment 1: Direct Fees

Section III(c)(1) of the proposed exemption would have required the Trustee to approve, in writing, all fees or other compensation paid to AWB-Affiliated Service Providers for services to the Plan, after determining that the fees and other compensation are direct payments from the Plan. Similarly, Section IV(b)(1) would have required a Trustee to contractually prohibit the AWB-Affiliated Service Provider from receiving any fees other than those paid directly by the Plan as of the first day of the first plan year after the Grant Date.

According to the Applicant, fees paid to Forterra and ProPoint no longer are paid out of trust assets. The Applicants explained in their comment that, effective April 1, 2021, Vimly, a service provider that is unaffiliated with AWB, collects contributions remitted by Participating Employers, retains a portion of the collected amount as its fee, remits fees payable to Forterra and ProPoint directly to those entities, and remits the balance to the trust.

After considering this comment, the Department is revising Sections III(c)(1) and IV(b)(1) to provide that fees and other compensation must be direct payments from, *or on behalf of*, the Plan. Adding “on behalf of” confirms that the exemption is available for funds paid by Vimly directly to Forterra and ProPoint from contributions remitted by

Participating Employers, even if they are not contributed to the trust.

Comment 2: Related Fee Increases

The Applicants expressed concern with Section IV(b)(2) of the Proposed Exemption. This provision requires fees provided to service providers, other than any insurance broker of record that is not affiliated with AWB, to be established independently of other service provider fees, so that an increase in one fee does not directly or indirectly, cause an increased fee payment to another service provider. The Applicants requested that the Department eliminate this requirement in its entirety. Alternatively, Applicants requested that the Department revise the requirement to provide that when one service provider's fees increase, the fees paid to other service providers, other than insurance brokers of record that are not affiliated with AWB, would be contractually adjusted unless the Trustees determine, in accordance with the other conditions of the Proposed Exemption that (a) the resulting increase to the other service providers' fees does not cause those fees to exceed reasonable compensation within the meaning of ERISA Section 408(b)(2) and (b) such resulting fee increase is prudent and in the best interests of Plan participants. However, if the Department retains Section IV(b)(2) as proposed, the Applicants requested that the Department delay the effective date of the requirement until the second plan year after the Grant Date.¹²

After considering the Applicants' comment, the Department has decided to finalize Section IV(b)(2) as proposed. The exemption as a whole requires the Trustees to closely monitor all fees paid to AWB-affiliated service providers. For example, Section III(c) requires the Trustees to closely monitor all fees paid to AWB-Affiliated Service Providers by ensuring that that fees and other compensation paid to them does not exceed reasonable compensation for services that are necessary and actually rendered to the Plan, and Section IV(b)(1)(A) prohibited rates from increasing during the contract period. The Department's position is that allowing automatic increases to all service providers' fees is contrary to Trustee's responsibility.

The Department notes there are multiple ways that Applicants may satisfy Section IV(b)(2). For example, the Applicants' current method of

⁸ See *Harris Trust & Savings Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238 (2000). The Department notes its longstanding position that the proposal or grant of a prohibited transaction exemption is not dispositive of whether a prohibited transaction has occurred or will occur.

⁹ The Proposed Exemption established a July 31, 2023, deadline for the public to submit comments and requests for a hearing. However, the Department was informed that AWB had to redistribute the proposed exemption package, including the notice to interested parties, due to an incomplete first distribution. Therefore, in a **Federal Register** notice published on July 17, 2023 (88 FR 45448), the Department extended the proposed exemption's comment period until August 14, 2023, to provide additional time for interested parties to prepare and submit their comments.

¹⁰ All information submitted by the Applicant to the Department in connection with this exemption is available through the Department's Public Disclosure Room, by referencing L-11989.

¹¹ The Representations stated herein are based on AWB's representations provided in its exemption application and do not reflect factual findings or opinions of the Department unless indicated otherwise. The Department notes that the availability of this exemption is subject to the express condition that the material facts and representations contained in application L-11989 are true and complete at all times, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change.

¹² The Applicants requested this delay because the cost of coverage has already been determined for the first plan year after the Grant Date and is in the process of being communicated to Participating Employers.

calculating service provider compensation based on rates that are determined by Premiera using a generally-recognized industry method would not necessarily violate this condition.

As requested by the Applicants, the Department is extending the effective date of the condition. Therefore, while most of Section IV becomes applicable as of the first day of the first plan year after the Grant Date, Section IV(b)(2) will not become effective until the first day of the second plan year after the Grant Date. This will ensure that all parties have sufficient time to negotiate fees paid to service providers.

Comment 3: AWB Membership

As proposed, the definition of “AWB-Affiliated Service Provider” was AWB, Forterra, Inc., ProPoint, LLC, or any other entity providing services to the Plan that is an Affiliate. Section IV(b)(1)(B) of the proposal would have required the Trustees to contractually prohibit the AWB-Affiliated Service Providers from receiving any fees other than those paid directly by the Plan. Applicants expressed concern that, because membership in AWB is a prerequisite for participating in the Plan and requires the Participating Employers to pay a membership fee, proposed Section IV(b)(1)(B) could have been interpreted as prohibiting AWB from receiving its routine membership fees. To address this ambiguity, the Applicants requested that the Department clarify that the definition of AWB-Affiliated Service Provider only includes AWB only to the extent AWB provides services to the Plan. Rather than change the definition of AWB-Affiliated Service Provider, which could affect other exemption conditions, the Department is revising Section IV(b)(1)(B) to add “Notwithstanding the foregoing, AWB may receive a membership fee from Participating Employers.”

Comment 4: Disclosure

Section III(d)(2)(B) of the Proposed Exemption would have required the AWB-Affiliated Service Providers to disclose to the Trustee a description of all compensation, both in the aggregate and by service, the AWB-Affiliated Service Providers and any subcontractor reasonably expect to receive from the Plan.¹³

¹³ In the proposal, the Department noted “[t]his is broader than the statutory language in ERISA section 408(b)(2)(B)(iii)(III), which requires a description of all direct compensation ‘either in the aggregate or by service.’” However, the requirements of this condition are specific to this

The Applicants request that the Department provide further clarification and guidance regarding the requirement to describe compensation “by service,” and regarding whether any specific services listed in the disclosure would require a separate allocation of fees. Alternatively, the Applicants request that the Department provide guidance that allows specific services to be broken down into categories for which separate fees would be expressed by category.

The disclosure of all services and fees by the AWB-Affiliated Service Providers to the Trustees and the Participating Employers is paramount to the Department making its statutory findings under ERISA section 408(a) that are required for it to provide the exemptive relief provided in this final exemption. The Department’s position is that providing aggregate and detailed fee information disclosing the services provided is crucial for the Trustees and the Participating Employers to meet their obligations under the Exemption, including the determination that the fees and other compensation do not exceed reasonable compensation within the meaning of ERISA section 408(b)(2).¹⁴ The Department, however, acknowledges the exact fees for certain specific services may not be known at the time of the disclosure and the condition requires disclosure of fees that “AWB-Affiliated Service Providers and any subcontractor reasonably expect to receive from the Plan.” The Department expects that when the AWB-Affiliated Service Provider or any subcontractor *reasonably expects* specific fees for specific services, those fees must be disclosed. At the same time, AWB-Affiliated Service Providers must disclose all specific services associated with the aggregate fees.

Comments From the General Public

Comment on ERISA Section 514

The Department received one comment that expressed the commenter’s opinion that it was “legally impermissible” for the Department “to grant an exemption from the prohibited transaction restrictions to the Association of Washington Business HealthChoice Employee Benefits Trust” because ERISA Sections 514(b)(6)(A) and (B) preclude the Department from granting

Arrangement and this exemption. The Department is not providing guidance on the statutory language.

¹⁴ In granting this exemption, the Department is taking no position on whether the fees described in Applicant’s comment are reasonable. That determination must be made by the Trustee based on all facts and circumstances.

any exemption to a fully insured Multiple Employer Employee Welfare Arrangement (MEWA).

The Department disagrees with the commenter’s interpretation of ERISA section 514(b)(6). In general, ERISA’s broad preemption of state laws contained in ERISA section 514(a) provides that ERISA’s Titles I and IV supersede any state laws that relate to any ERISA-covered employee benefit plan except as provided in ERISA section 514(b). In 1983, Congress amended ERISA to add section 514(b)(6). One of the main purposes for this amendment was to protect employee benefit plan participants and beneficiaries by facilitating state regulation of MEWAs.¹⁵ To that end, ERISA section 514(b)(6) modified the scope of ERISA’s preemption of state insurance laws as they apply to employee welfare benefit plans that also are MEWAs.

Specifically, if an employee welfare benefit plan that is also a MEWA is not fully insured, then ERISA section 514(b)(6)(A)(ii) provides that any state law that regulates insurance may apply to the MEWA to the extent state law is not inconsistent with ERISA. If, on the other hand, an employee welfare benefit plan that also is a MEWA is fully insured, ERISA section 514(b)(6)(A)(i) provides that only those state laws that regulate the maintenance of specified contribution and reserve levels may apply to the MEWA.¹⁶

The commenter seems to misunderstand several aspects of ERISA section 514(b)(6). Contrary to the commenter’s assertion that “ERISA Section 514(b)(6) provides specific criteria that must be met before ERISA title I provisions can be applied” to a MEWA, section 514(b)(6) prescribes circumstances when state laws that otherwise would be preempted by ERISA section 514(a) can be applied to MEWAs that are employee welfare benefit plans *in addition to* ERISA Title I, which governs the operation of these plans. In other words, section 514(b)(6) permits state insurance laws to apply rather than automatically being preempted by ERISA, but it does not eliminate the applicability of Title I enforcement provisions to MEWAs. In fact, section 514(b)(6) only is relevant

¹⁵ DOL Advisory Opinion 2011–01A.

¹⁶ ERISA section 514(b)(6)(D) provides, in turn, that a MEWA will be considered fully insured for purposes of ERISA section 514(b)(6) only if the terms of the arrangement provide for benefits the amount of all of which the Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, “qualified to conduct business in a State.”

for plans that are covered by title I of ERISA, because it provides an exception to ERISA's preemption of all State laws that apply to "employee benefit plans" described in ERISA section 4(a) that are not exempt by ERISA section 4(b).

Furthermore, the commenter asserts that "the Department is barred from issuing any exemptions that mandate that Title I of ERISA is applicable to a fully insured MEWA." To support its assertion, the commenter relies on the language in ERISA section 514(b)(6)(B) which states: "The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii), individually or by class, multiple employer welfare arrangements *which are not fully insured.*" (emphasis in the comment). However, the commenter fails to realize that this provision is completely irrelevant to this exemption because this exemption provides relief from ERISA section 406, not ERISA section 514(b)(6)(A)(ii).

Based upon the Applicants' representation that the Arrangement is a bona fide association as defined in the Department's sub-regulatory guidance, and is a Plan MEWA that provides fully-insured welfare benefits subject to ERISA (including the prohibited transaction provisions in ERISA section 406), the Department has authority to grant this exemption.

Comment on ERISA Section 408(a)

Another commenter claimed that the proposed exemption violates ERISA section 408(a) due to the Department's failure to "demonstrate to the public that it properly determined that the specific 'rights of participants' of a plan that is subject to ERISA Title I are being protected."

The Department fully understands and takes very seriously its responsibility to adhere to the mandate in ERISA section 408 that requires the Department to find that the exemption is (1) administratively feasible, (2) in the interests of affected plans and of their participants and beneficiaries, and (3) protective of the rights of participants and beneficiaries of such plans before granting this exemption. The Department made its preliminary statutory findings in the Proposed Exemption and confirms such findings in this Notice of Granted Exemption based on its review of the entire record and the requirement that the Applicants fully comply with the exemption conditions at all times. The record and the Department's findings are based in part on representations made by the Applicants, one representation of which is that the Arrangement is a bona fide

association as defined in the Department's sub-regulatory guidance and a Plan MEWA that provides fully-insured welfare benefits subject to ERISA. As stated in the Proposed Exemption and this Notice of Granted Exemption, the availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction that are the subject of the exemption and the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of determining whether the transaction is in fact a prohibited transaction. If any representation made by the Applicants is not accurate or there are any material changes to those representations the exemptive relief provided in this exemption would not be valid.

Comment From the Department

This final amendment makes minor ministerial changes, such as spelling out numbers and moving clauses within a sentence.

The complete application file (L-11989) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, please refer to the notice of proposed exemption published on June 14, 2023, at 88 FR 38896.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA provisions, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA section 404(a)(1)(B).

(2) As required by ERISA section 408(a), the Department hereby finds that the exemption is (1) administratively feasible, (2) in the interests of affected plans and of their participants and beneficiaries, and (3) protective of the

rights of participants and beneficiaries of such plans;

(3) The exemption is supplemental to, and not in derogation of, any other ERISA provisions, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of determining whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction that are the subject of the exemption.

Accordingly, the following exemption is granted under the authority of ERISA Section 408(a) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011):

Exemption

Section I. Definitions

(a) "AWB" means the Association of Washington Business.

(b) "AWB-Affiliated Service Provider" means AWB, Forterra, Inc., ProPoint, LLC, or any other entity providing services to the Plan that is an Affiliate.

(c) An "Affiliate" is a person that is:

- (1) Controlling, controlled by, or under common control with AWB;
- (2) An officer, director, partner, or employee of AWB; or
- (3) A corporation or partnership of which AWB is an officer, director, partner, or employee.

For purposes of this definition, "control" means the power, direct or indirect, to exercise a controlling influence over the management or policies of a person other than an individual;

(d) The "Grant Date" is the date the final exemption is published in the **Federal Register**.

(e) "Participating Employer" means any of the member employers of AWB who provides medical, dental, vision, and life insurance benefits to their employees through the Plan.

(f) "Plan" means any plan that is funded by the AWB HealthChoice Employee Benefits Trust, including through an Industry Trust.

(g) A "Trustee" is a person elected in accordance with Section III(a)(3).

Section II. Covered Transactions

The exemption provides relief to the Trustees for their selection of an AWB-Affiliated Service Provider to provide services to the Plans for a fee, if the

conditions of Sections III and IV are met, subject to the definitional terms in Section I. The exemption would provide relief only from the restrictions of ERISA section 406(b)(1).

Section III. General Conditions

The following conditions apply for each Plan as of the Grant Date, as defined in Section I(d).

(a) Plan Structure

(1) The Plan is a fully-insured employee welfare benefit plan.

(2) The Plan is established or maintained by an employer within the meaning of ERISA section 3(5).

(3) The Trustee with respect to the Plan is:

(A) A trustee, employee, officer, director, or owner of a Participating Employer in the industry classification associated with the Plan;

(B) Nominated by a Participating Employer in the industry classification associated with the Plan and elected by a majority vote of Participating Employers in the industry classification;

(C) Independent of AWB and its Affiliate, which means the Trustee (1) is not an Affiliate of AWB or a trustee, employee, officer, director, member or agent of any Affiliate of AWB, and (2) does not have a relationship with or an interest in AWB or any of its Affiliates that might affect the exercise of the person's best judgment in connection with transactions described in Section II of this exemption; and

(D) Not an employee, officer, director, member or agent of a Participating Employer that is also a service provider to any Plan.

(4) The Participating Employers in each industry classification have the sole authority to:

(A) Remove the Trustee with respect to the Plan associated with that industry classification, with or without cause, by majority vote; and

(B) Dissolve or amend the Plan associated with that industry classification by majority vote.

(5) Each person who is nominated to serve as a Trustee to the Plan undergoes fiduciary training before their decision to serve as a Trustee, if elected, and annually thereafter. The fiduciary training is provided by a professional who has appropriate technical training and proficiency with ERISA and who has been prudently selected by the board of Trustees and covers, at a minimum, ERISA compliance, fiduciary duties, the conditions of the exemption, and the consequences of failing to comply with the conditions (including any loss of exemptive relief provided herein). Existing Trustees as of the Grant

Date must receive this training within three (3) months of the Grant Date.

(6) Neither the Plan nor any Participating Employer indemnifies AWB or its Affiliates for any reason.

(7) Legal counsel for the Plan does not also represent AWB or any Affiliate.

(b) Selection of Service Providers

(1) The Trustee has and exercises sole fiduciary authority to select service providers for the Plan. The Trustee exercises their fiduciary authority in accordance with ERISA section 404 to prudently and loyally select service providers and document the selection process and considerations, including whether an AWB-Affiliated Service Provider and its personnel have the qualifications and capability to perform such services; whether the fees to be charged reflect arm's-length terms; and whether the arrangements are reasonable, compared with similarly qualified service providers. The documentation must provide sufficient context and detail and be written in a manner to ensure that any party authorized to review the records under Section III(e) can understand the reasoning for the selection.

(2) Before entering into or renewing any services contracts with an AWB-Affiliated Service Provider on behalf of the Plan, the Trustee determines that the services are necessary to the operation of the Plan and documents the reasons for the determination.

(3) Contracts (including renewals) between the Plan and an AWB-Affiliated Service Provider:

(A) Are limited to no more than three years' duration; and

(B) Allow the Trustee to terminate the contract any time without penalty to the Plan by providing thirty (30) days' written notice.

(4) The AWB-Affiliated Service Provider may be compensated by the Plan for its services as an insurance broker of record to a Participating Employer only if:

(A) The Trustee selects the AWB-Affiliated Service Provider in accordance with Section III(b)(2);

(B) The Trustee obtains the Participating Employer's written certification that it has received a disclosure from the Trustee that includes descriptions of:

(i) the nature of the affiliation (as described in Section I(c)) between the AWB-Affiliated Service Provider and AWB;

(ii) the services that will be provided by the AWB-Affiliated Service Provider; and

(iii) the amount of fees that the AWB-Affiliated Service Provider will receive,

provided that if the fee is disclosed as a percentage of another amount, it is accompanied by an example of the calculation expressed in dollars; and

(C) The Trustee ensures the Plan pays the AWB-Affiliated Service Provider for its services as broker of record no more than the lowest commission paid to an unaffiliated broker of record.

(5) The Trustee monitors the AWB-Affiliated Service Provider's performance of services and compliance with the applicable conditions of this exemption prudently and loyally in accordance with ERISA section 404.

(c) Fees

The Trustee approves, in writing, all fees or other compensation paid to AWB-Affiliated Service Providers for services to the Plan, after determining that the fees and other compensation:

(1) are direct payments from, or on behalf of, the Plan;

(2) are for services that are necessary and actually rendered to the Plan; and

(3) do not exceed reasonable compensation within the meaning of ERISA section 408(b)(2).

(d) Disclosure

(1) The Trustee distributes the following disclosures to Participating Employers at initial enrollment and at each annual renewal thereafter:

(A) A description of the relationship between AWB and any other AWB-Affiliated Service Provider that the Trustee has selected;

(B) A statement that that the Trustee is a fiduciary with respect to the Plan and that before entering into or renewing any services contracts with an AWB-Affiliated Service Provider on behalf of the Plan, the Trustee exercised their fiduciary authority in accordance with ERISA section 404 to prudently and loyally select service providers; and

(C) A statement that the Participating Employers, directly or indirectly through the Trustees, have control over the Plan, including the authority and control to select alternative service providers to AWB or AWB-Affiliated Service Providers.

(2) The Trustee receives the following disclosure from the AWB-Affiliated Service Providers, and reviews, approves and distributes the disclosures to Participating Employers at initial enrollment and at each annual renewal thereafter:

(A) A description of the services that are to be provided by any AWB-Affiliated Service Provider to the Plan;

(B) A description of all compensation, both in the aggregate and by service, the AWB-Affiliated Service Providers and any subcontractor reasonably expect to receive from the Plan;

(C) A description of any compensation that will be paid among the AWB-Affiliated Service Providers or a subcontractor, if such compensation is set on a transaction basis (such as commissions, finder's fees, or other similar incentive compensation based on business placed or retained). The AWB-Affiliated Service Provider must identify the services for which such compensation will be paid and identify the payers and recipients of such compensation (including the status of a payer or recipient as an Affiliate or a subcontractor) regardless of whether such compensation also is disclosed pursuant to paragraph (E) or (F), below;

(D) A description of any compensation that the AWB-Affiliated Service Provider, an affiliate, or a subcontractor reasonably expects to receive in connection with termination of the contract or arrangement, and how any prepaid amounts will be calculated and refunded upon such termination; and

(E) a description of the manner in which the compensation described in clause (B) through (D), as applicable, will be received.

(e) Recordkeeping

(1) The Trustee maintains for a period of six (6) years, in a manner that is reasonably accessible for examination, the records necessary to enable the persons described in paragraph (2) below to determine whether the conditions of this exemption have been met, except that:

(A) If such records are lost or destroyed due to circumstances beyond the control of the Trustee, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(B) No party in interest other than the Trustee will be subject to the civil penalty that may be assessed under ERISA section 502(i) if the records are not maintained or are not available for examination as required below:

(2)(A) Except as provided in paragraph (B) below, and notwithstanding any provisions of ERISA section 504(a)(2) and (b), the records referred to in Section III(d)(1) are reasonably available at their customary location for examination during normal business hours by:

(i) Any authorized employee or representative of the Department;

(ii) Any Participating Employer or fiduciary of a Plan, or any authorized employee or representative of these entities; or

(iii) Any individual participant or beneficiary of a Plan or any authorized

representative of the participant or, beneficiary; and

(B) None of the persons described in paragraph (e)(2)(A)(ii) or (iii) of this Section above are authorized to examine records that are confidential, privileged trade secrets, or privileged commercial or financial information.

(C) If the Trustee refuses to disclose information on the basis that the information is exempt from disclosure under subsection (B), the Trustee must provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information by the close of the thirtieth (30th) day following the request.

(3) The Trustee must provide sufficient information necessary to demonstrate that the exemption conditions have been met over the prior six-year period. The Trustee must maintain and retain such records in a manner that ensures it would be able to provide the information to the Department within 30 calendar days of a request.

(f) Material Facts and Representations

All the material facts and representations provided by the Applicants are true and accurate at all times.

Section IV. Phase-In Conditions

Except as otherwise noted in section IV(b)(2), the following additional conditions apply as of the first day of the first plan year after the Grant Date.

(a) Plan Documents and Contracts

(1) Plan documents and disclosures:

(A) accurately describe the role and fiduciary status of the Trustee;

(B) do not include any disclaimers of fiduciary status for any party, including AWB and any Affiliate; and

(C) do not indicate, in any way, including on a website, that AWB or its Affiliates are the sponsor of the Plan.

(2) The insurance contract is held in the name of the Plan.

(3) AWB-Affiliated Service Providers contractually agree that all information they provide to the Trustee, Participating Employers and prospective Participating Employers regarding their services to the Plan and related fees is materially accurate at the time it is provided.

(b) Fees

(1) Before entering into any contract for services with an AWB-Affiliated Service Provider on behalf of the Plan, the Trustee:

(A) Negotiates the rate of fees to be paid for services to the Plan and ensures

that the rate does not increase during the contract period; and

(B) Contractually prohibits the AWB-Affiliated Service Provider from receiving any fees other than those paid directly by, or on behalf of, the Plan. Notwithstanding the foregoing, AWB may receive a membership fee from directly Participating Employers. The membership fee may be a prerequisite for participation in the Plan, but the membership fee may not be compensation for any services provided to the Plan.

(2) As of the first day of the second plan year after the Grant Date, fees for service providers, other than any insurance broker of record that is not Affiliated with AWB, are established independently of other service provider fees, so that an increase in one fee does not cause, directly or indirectly, an increased payment to another service provider. For purposes of this condition, a service provider fee does not include an insurance premium (*i.e.*, fees may be calculated as percentages of premiums paid to the insurance company).

(3) Fees collected from Participating Employers and Plan participants are based on actual, rather than estimated, amounts due to service providers.

(c) Disclosure

(1) The disclosure described in Section III(d)(1) includes the following additional information:

(A) A description of any compensation that the AWB-Affiliated Service Provider, or any subcontractor, reasonably expects to receive in connection with termination of a contract or arrangement with the Plan and how any prepaid amounts will be calculated and refunded upon such termination; and

(B) A description of the methodology by which AWB-Affiliated Service Provider fees are calculated, including examples with dollar amounts.

(2) The Plan documents require the AWB-Affiliated Service Provider to furnish, upon written request, any information the Trustee reasonably requests, within 30 days after the request unless the disclosure cannot be provided due to extraordinary circumstances beyond the control of the AWB-Affiliated Service Provider, in which case the information must be provided as soon as reasonably practicable and the AWB-Affiliated Service Provider must provide the Trustee with a notice explaining why they cannot meet the 30-day deadline.

(d) Monthly Billing Statements

The Trustees provide to Participating Employers a monthly billing statement that includes:

(1) *The following statement:* “The amounts you pay each month for health insurance coverage include fees for administrative services, including fees paid to service providers affiliated with the Association of Washington Business (AWB). A description of the services provided by each AWB affiliate is provided to you at the time of your initial enrollment and at each annual renewal. You can also contact [NAME, phone number, email address] for additional copies.”

(2) A chart accurately listing all service providers and the fee percentages or other amounts they receive. If any administrative services fees are expressed as a percentage of the insurance premium, the disclosure must also include an example showing how fees would be calculated based on a \$1,000 insurance premium; and

(3) A point of contact, including a phone number and email address, for copies of disclosures or for additional information.

Exemption date: The exemption will be in effect as of the date of publication of the final exemption in the **Federal Register**.

Signed at Washington, DC, this 2nd day of July 2024.

George Christopher Cosby,

*Director, Office of Exemption Determinations,
Employee Benefits Security Administration,
U.S. Department of Labor.*

[FR Doc. 2024–14959 Filed 7–8–24; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Agency Information Collection Activities; Request for Public Comment

AGENCY: Employee Benefits Security Administration (EBSA), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act, provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the

Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at [reginfo.gov](http://www.reginfo.gov/public/do/PRAMain) (<http://www.reginfo.gov/public/do/PRAMain>).

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before September 9, 2024.

ADDRESSES: U.S. Department of Labor, Employee Benefits Security Administration, Office of Research and Analysis, Attention: PRA Officer, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210, or ebbsa.opr@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Current Actions

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transaction exemptions described below. This action is not related to any pending rulemakings and the Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Bank Collective Investment Funds, Prohibited Transaction Class Exemption 1991–38.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0082.

Affected Public: Private sector, Businesses or other for-profits, Not-for-profit institutions.

Respondents: 9,332.

Responses: 9,332.

Estimated Total Burden Hours: 1,555.

Estimated Total Burden Cost (Operating and Maintenance): \$0.

Description: Prohibited Transaction Class Exemption (PTE) 91–38 provides an exemption from the restrictions of sections 406(a), 406(b)(2) and 407(a) of ERISA and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A), (B), (C), or (D) of

the Code for certain transactions between a bank collective investment fund in which an employee benefit plan has invested assets and persons who are parties in interest to the employee benefit plan, as long as the interest of the plan together with the interests of any other plans maintained by the same employer or employee organization in the collective investment fund does not exceed 10% of the total assets in the collective investment fund. In addition, the bank managing the common investment fund must not itself be a party in interest to the participating plan, the terms of the transaction must be at least as favorable to the collective investment fund as those available in an arm's length transaction with an unrelated party, and the bank must maintain records of the transactions for six years and make the records available for inspection to specified interested persons (including the Department and the Internal Revenue Service).

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0082. The current approval is scheduled to expire on April 30, 2025.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: PTE 1990–1; Insurance Company Pooled Separate Accounts.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0083.

Affected Public: Private sector, Business or other for profits.

Respondents: 108.

Responses: 1,080.

Estimated Total Burden Hours: 108.

Estimated Total Burden Cost (Operating and Maintenance): \$0.

Description: Prohibited Transaction Exemption (PTE) 90–1 provides an exemption from the restrictions of ERISA section 406 and Code section 4975, in part, for certain transactions between insurance company pooled separate accounts and parties in interest to plans that invest assets in the pooled separate accounts. PTE 90–1 provides an exemption for certain transactions between a party in interest with respect to a plan and an insurance company pooled separate account in which the plan has an interest or any acquisition or holding by the pooled separate account of employer securities or employer real property, provided that the party in interest is not the insurance company (or an affiliate of the insurance company) which holds the plan assets in its pooled separate account or any other separate account of the insurance company and that the amount of the

plan's investment in the separate account does not exceed certain specified percentages (or that the separate account is a specialized account with a policy of investing, and invests, substantially all of its assets in certain specified short-term obligations).

PTE 90–1 also provides specific, additional relief for the following types of transactions with a party in interest: (1) furnishing goods to an insurance company pooled separate account, (2) leasing of real property of the pooled separate account, (3) transactions involving persons who are parties in interest to a plan solely because they are service providers or provide nondiscretionary services to the plan; (4) the insurance company's provision of any services provided to an insurance company pooled separate account (in which the plan has an interest) by the insurance company or its affiliate in connection with the management of the real property investments of the pooled separate account, and (5) furnishing of services, facilities, and goods incidental to the services and facilities by a place of public accommodations owned by the separate account.

In addition to other specified conditions, the insurance company intending to rely on the general exemption or any of the specific exemptions must maintain records of the transactions to which the exemption applies for a period of six years from the date of the transaction and make the records available on request to specified interested persons (including plan fiduciaries, participant and beneficiaries, contributing employers, the Department, and the Internal Revenue Service).

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0083. The current approval is scheduled to expire on April 30, 2025.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Foreign Currency Transactions, Prohibited Transaction Class Exemption 1994–20.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0085.

Affected Public: Private sector, Business or other for profits, Not-for-profit institutions.

Respondents: 242.

Responses: 1,210.

Estimated Total Burden Hours: 202.

Estimated Total Burden Cost (Operating and Maintenance): \$0.

Description: Prohibited Transaction Exemption (PTE) PTE 94–20 provides

an exemption for banks, broker-dealers, and their affiliates that are parties in interest to a plan to engage in foreign currency transactions with the plan, provided the transaction is directed by a plan fiduciary that is independent of the bank, broker-dealer, and any affiliate thereof and that certain other conditions are satisfied. To protect the interests of participants and beneficiaries of the employee benefit plan, the exemption requires, among other things, that a bank, broker-dealer, and any affiliate wishing to rely on the exemption (1) maintain written policies and procedures applicable to trading in foreign currencies with an employee benefit plan; (2) provide a written confirmation statement of each foreign currency transaction to the independent plan fiduciary directing the transaction for the plan; and (3) maintain records of the transactions for a period of six years from the date of the transaction and make them available upon request to specified interested persons, including plan fiduciaries, participants and beneficiaries, the Internal Revenue Service, and the Department.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0085. The current approval is scheduled to expire on April 30, 2025.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Definition of Plan Assets—Participant Contributions.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0100.

Affected Public: Private sector, Business or other for profits.

Respondents: 251.

Responses: 251.

Estimated Total Burden Hours: 8.

Estimated Total Burden Cost (Operating and Maintenance): \$1,685.

Description: The Department's regulation at 29 CFR 2510.3–102 states that monies that a participant pays to, or has withheld by, an employer for contribution to an employee benefit plan become “plan assets” for purposes of Title I of ERISA and the related prohibited transaction provisions of the Internal Revenue Code (the Code) as of the earliest date on which such monies can be reasonably segregated from the employer's general assets.

The regulation also establishes specific maximum time limits for contributions becoming plan assets that apply to employee pension benefit plans (with a special rule for SIMPLE IRA plans) and employee welfare benefit plans. The regulation sets a maximum

time limit of 15 business days following the end of the month in which the participant contribution amounts are received or withheld by the employer. The regulation includes a procedure through which an employer receiving or withholding participant contributions for an employee pension benefit plan may obtain a 10-business-day extension of the 15-day maximum time period for contributions received or withheld in a single month if certain requirements, including information collection requirements, are met.

The regulation requires, among other things, that the employer provide written notice to plan participants within five business days after the end of the extension period and the employer's transfer of the contributions to the plan, for which the employer elected to take the extension that month. The notice must explain why the employer could not transfer the participant contributions within the maximum time period, state that the participant contributions in question have in fact been transmitted to the plan, and provide the date on which this was done. The employer must also provide a copy of the participant notice to the Secretary, along with a certification that the notice was distributed to participants and that the other requirements under the extension procedure were met, within five business days after the end of the extension period.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0100. The current approval is scheduled to expire on April 30, 2025.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Collective Investment Funds Conversion Transactions, Prohibited Transaction Class Exemption 1997–41.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0104.

Affected Public: Private sector, Business or other for profits, Not-for-profit institutions.

Respondents: 50.

Responses: 105.

Estimated Total Burden Hours: 1,760.

Estimated Total Burden Cost (Operating and Maintenance): \$585,299.

Description: Prohibited Transaction Exemption (PTE) 97–41 permits an employee benefit plan to purchase shares of a registered open-end investment company (mutual fund) in exchange for plan assets transferred in-kind from a collective investment fund (CIF) maintained by a bank or plan

adviser, even though the bank or plan adviser, or an affiliate thereof, is the investment adviser for the mutual fund and also serves as a fiduciary for the plan, provided that the purchase and transfer is in connection with a complete withdrawal of the plan's investment in the CIF and certain other conditions are met.

Among other conditions, the exemption requires the bank or plan adviser to provide an independent fiduciary of the plan with advance written notice of the proposed transfer and full written disclosure of information concerning the mutual fund, including the current prospectus; disclosure of the fees to be charged to, or paid by the plan and funds to the bank or plan adviser, including the nature and extent of any differential between the rates of the fees; the reasons why the bank or plan adviser considers the in-kind transfers appropriate for the plan; and a statement of whether there are any limitations applicable to the bank or plan adviser with respect to which plan assets may be invested in shares of the mutual fund and, if so, the nature of such limitations; and the identity of securities that will have to be valued for the transfer. The independent fiduciary must give prior written approval of the transfer (and written approval of any electronic transmission of subsequent confirmations from the bank or plan adviser, if the independent fiduciary elects to receive such statements in that form); and the bank or adviser must send written (or electronic, if approved) confirmation of the transfer. Subsequent to a transfer, the bank or plan adviser must provide the independent fiduciary of the plan with updated prospectuses at least annually for mutual funds in which the plan remains invested; the bank or plan adviser must also provide, upon the independent fiduciary's request, a report or statement of all fees paid by the mutual fund to the bank or plan adviser, which may be in the form of the most recent financial report.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0104. The current approval is scheduled to expire on April 30, 2025.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (PTCE 2002-12).

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0115.

Affected Public: Private sector, Business or other for profits.

Respondents: 60.

Responses: 840.

Estimated Total Burden Hours: 855.

Estimated Total Burden Cost (Operating and Maintenance): \$1,290.

Description: Prohibited Transaction Exemption (PTE) 2002-12 permits private-sector pension plans and the Federal Thrift Savings Plan to buy and sell securities between certain types of investment funds that participate in passive or model-driven "cross-trading" programs pursuant to objective criteria specified in the exemption. The exemption extends only to crossing-trading conducted according to index- or model-driven programs that meet the specific requirements of the exemption, which generally seeks to create objective criteria sufficient to confine or eliminate the manager's discretion to affect the identity or amount of securities to be cross-traded and the timing of cross-trades. The exemption also covers cross-trades among such funds and certain large accounts that engage managers to carry out a specific portfolio restructuring program in order to convert the large account into a fund, or to otherwise act as a "trading adviser" for such a restructuring program.

The information collection requirements that are conditions for reliance on the class exemption include third-party disclosures and recordkeeping. The exemption does not require any reporting or filing with the Federal government, but the designated records must be made available to specified parties, including the Department and the IRS, upon request.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0115. The current approval is scheduled to expire on April 30, 2025.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Acquisition and Sale of Trust Real Estate Investment Trust Shares by Individual Account Plans Sponsored by Trust Real Estate Investment Trusts.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0124.

Affected Public: Private sector, Business or other for profits.

Respondents: 67.

Responses: 140,700.

Estimated Total Burden Hours: 7,046.

Estimated Total Burden Cost (Operating and Maintenance): \$465,717.

Description: Prohibited Transaction Exemption 2004-07 permits an individual account pension plan

sponsored by a real estate investment trust (REIT) within the meaning of Code section 856 that is organized as a trust under applicable law (Trust REIT), or by its affiliates, to purchase, hold and sell publicly traded shares of beneficial interest in the Trust REIT at the direction of the participant or an independent fiduciary. The relief also covers contributions in kind of REIT shares. Such purchases, holdings, and sales would otherwise be prohibited under ERISA section 406 and Code section 4975.

The class exemption requires, among other conditions, that the Trust REIT (or its agent) provide the person who has authority to direct acquisition or sale of REIT shares with the most recent prospectus, quarterly report, and annual report concerning the Trust REIT prior to or immediately after an initial investment in the Trust REIT. The person with such authority may be, under the terms of the plan, either an independent fiduciary or a participant exercising investment rights pertaining to his or her individual account under the plan. Updated versions of the reports must be provided to the directing person as published. The exemption further requires the plan to maintain records concerning investments in a Trust REIT for a period of six years and make them available to interested persons including the Department, Internal Revenue Service, fiduciary or authorized representative of the plan, and participants and beneficiaries. The exemption requires confidentiality procedures, which must be designed to protect against the possibility that an employer may exert undue influence on participants regarding share-related transactions, and the participants and beneficiaries of the plan must be provided with a statement describing the confidentiality procedures in place and the fiduciary responsible for monitoring these procedures.

The Department has received approval from OMB for this ICR under OMB Control No. 1210-0124. The current approval is scheduled to expire on April 30, 2025.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Genetic Information Nondiscrimination Act of 2008 Research Exception Notice.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0136.

Affected Public: Private sector, Business or other for profits, Not-for-profit institutions. *Respondents:* 48.

Responses: 48.

Estimated Total Burden Hours: 12.

Estimated Total Burden Cost

(Operating and Maintenance): \$185.

Description: The Genetic Information Nondiscrimination Act of 2008 (GINA), Public Law 110–233, was enacted on May 21, 2008. Title I of GINA amended the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act (PHS Act), the Internal Revenue Code of 1986 (the Code), and the Social Security Act (SSA) to prohibit discrimination in health coverage based on genetic information. Sections 101 through 103 of Title I of GINA prevent employment-based group health plans and health insurance issuers in the group and individual markets from discriminating based on genetic information and from collecting such information.

GINA and the interim final regulations (29 CFR 2590.702–1(c)(5)) provide an exception to the limitations on requesting or requiring genetic testing that allows a group health plan or group health insurance issuer to request, but not require, a participant or beneficiary to undergo a genetic test if all of the following conditions of the research exception are satisfied.

First, the request must be made pursuant to research that complies with 45 CFR part 46 (or equivalent Federal regulations) and any applicable State or local law or regulations for the protection of human subjects in research. To comply with the informed consent requirements of 45 CFR 46.116(a)(8), a participant must receive a disclosure that participation in the research is voluntary, refusal to participate cannot involve any penalty or loss of benefits to which the participant is otherwise entitled, and the participant may discontinue participation at any time without penalty or loss of benefits to which the participant is entitled (the Participant Disclosure).

Second, the plan or issuer must make the request in writing and must clearly indicate to each participant or beneficiary (or in the case of a minor child, to the legal guardian of such beneficiary) to whom the request is made that compliance with the request is voluntary and noncompliance will have no effect on eligibility for benefits, premium, or contribution amounts.

Third, none of the genetic information collected or acquired as a result of the research may be used for underwriting purposes. Finally, the plan or issuer must complete a copy of the “Notice of Research Exception under the Genetic Information Nondiscrimination Act” and provide it to the address specified

in its instructions. The Notice and instructions are available on the Department’s website.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0136. The current approval is scheduled to expire on April 30, 2025.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Opt-in State Balance Bill Process.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0168.

Affected Public: Private sector, Business or other for profits, Not-for-profit institutions.

Respondents: 207.

Responses: 207.

Estimated Total Burden Hours: 311.

Estimated Total Burden Cost (Operating and Maintenance): \$106.

Description: The No Surprises Act was enacted as part of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260). The final rules allow plans to voluntarily opt in to state law that provides for a method for determining the cost-sharing amount or total amount payable under such a plan, where a state has chosen to expand access to such plans, to satisfy their obligations under section 9816(a)–(d) of the Code, section 716(a)–(d) of ERISA, and section 2799A–1(a)–(d) of the PHS Act. A plan that has chosen to opt into a state law must prominently display in its plan materials describing the coverage of out-of-network services a statement that the plan has opted into a specified state law, identify the state (or states), and include a general description of the items and services provided by nonparticipating facilities and providers that are covered by the specified state law.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0168. The current approval is scheduled to expire on April 30, 2025.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Settlement Agreements Between a Plan and a Party in Interest.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0091.

Affected Public: Private sector, Business or other for profits.

Respondents: 3.

Responses: 810.

Estimated Total Burden Hours: 16.

Estimated Total Burden Cost (Operating and Maintenance): \$214.

Description: This information collection request relates to two prohibited transaction class exemptions (PTEs) that the Department has granted, both of which involve settlement agreements. These two exemptions are described below.

PTE 94–71 exempts from certain restrictions of ERISA and certain taxes imposed by the Code, a transaction or activity that is authorized, prior to the execution of the transaction or activity, by a settlement agreement, to which the Department is a party, resulting from an investigation of an employee benefit plan conducted by the Department. The following information collections are among the conditions for the exemption: (1) A party engaging in a settlement agreement arising out of a Department investigation must provide written notice to the affected participants and beneficiaries of the plan at least 30 days prior to entry into the settlement agreement. The notice must contain an objective description of the transaction or activity, the approximate date on which the transaction will occur, the address of the regional or district office of the Department that negotiated the settlement agreement, and a statement informing participants and beneficiaries of their right to forward their comments to such office. (2) A copy of the notice and a description of the method by which it will be distributed must be approved in advance by the regional or district office of the Department which negotiated the settlement.

PTE 2003–39 exempts from certain restrictions of ERISA and certain taxes imposed by the Code, transactions arising out of the settlement of litigation that involve: the release by the plan or a plan fiduciary of legal claims against parties in interest in exchange for payment given by or on behalf of the party in interest to the plan; an extension of credit by a plan to a party in interest in connection with a settlement; and the plan’s acquisition, holding, and disposition of employer securities received in settlement of litigation. The relief is granted provided certain conditions are met, such as the requirement of an independent fiduciary who has no relationship to, or interest in, any parties in the litigation to authorize the settlement and the settlement terms of the agreement and any extension of credit are reasonable and no less favorable than comparable arm’s length agreement. The other conditions include the following information collections: (1) The terms of the settlement must be specifically described in a written agreement or consent decree. (2) The fiduciary acting on behalf of the plan must acknowledge

in writing that the person is a fiduciary with respect to the settlement of the litigation. (3) The plan fiduciary must maintain records of the transaction for six years and must disclose the records on request to the Department and other interested persons.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0091. The current approval is scheduled to expire on May 31, 2025.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Voluntary Fiduciary Correction Program.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0118.

Affected Public: Private sector, Business or other for profits.

Respondents: 3,325.

Responses: 246,918.

Estimated Total Burden Hours: 22,202.

Estimated Total Burden Cost (Operating and Maintenance): \$42,175.

Description: This information collection arises from two related actions: the Voluntary Fiduciary Correction Program (the VFC Program) and Prohibited Transaction Class Exemption (PTE) 2002–51 (the Exemption). The Department adopted the Program and the Exemption in order to encourage members of the public to voluntarily correct transactions that violate (or are suspected of violating) the fiduciary or prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA). Both the Program and the Exemption incorporate information collection requirements in order to protect participants and beneficiaries and enable the Department to oversee the appropriate use of the Program and the Exemption. The information collection provisions of the Program and the Exemption include third-party disclosures, recordkeeping, and disclosures to the Federal government.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0118. The current approval is scheduled to expire on May 31, 2025.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Affordable Care Act Grandfathered Health Plan Disclosure, Recordkeeping Requirement, and Change in Carrier Disclosure.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0140.

Affected Public: Private sector, Business or other for profits, Not-for-profit institutions.

Respondents: 360,479.

Responses: 8,868,468.

Estimated Total Burden Hours: 655.

Estimated Total Burden Cost

(Operating and Maintenance): \$125,533.

Description: The Patient Protection and Affordable Care Act, Public Law 111–148, (the Affordable Care Act or the Act) was enacted on March 23, 2010. Section 1251 of the Act provides that certain plans and health insurance coverage in existence as of March 23, 2010, known as grandfathered health plans, are not required to comply with certain statutory provisions in the Act. On November 18, 2015, the Departments issued final regulations that contain the information collections (80 FR 72191).

To maintain its status as a grandfathered health plan, plans must maintain records documenting the terms of the plan in effect on March 23, 2010, and any other documents that are necessary to verify, explain, or clarify status as a grandfathered health plan. The plan must make such records available for examination upon request by participants, beneficiaries, individual policy subscribers, or a State or Federal agency official.

In addition, grandfathered health plans must include a statement in plan materials provided to participants or beneficiaries describing the benefits provided under the plan or health insurance coverage, that the plan or coverage believes it is a grandfathered health plan within the meaning of section 1251 of the Affordable Care Act, that being a grandfathered health plan means that the plan does not include certain consumer protections of the Affordable Care Act, providing contact information for participants to direct questions regarding which protections apply and which protections do not apply to a grandfathered health plan, and what might cause a plan to change from grandfathered health plan status and to file complaints. However, grandfathered health plans are not required to provide the disclosure statement every time they send out a communication, such as an explanation of benefits, to a participant or beneficiary. Instead, grandfathered health plans will comply with this disclosure requirement if they include the model disclosure language provided in the Departments' interim final grandfather regulations (or a similar statement) whenever a summary of the benefits under the plan is provided to participants and beneficiaries.

Finally, grandfathered group health plans that change health insurance

issuers must provide the succeeding health insurance issuer (and the succeeding health insurance issuer must require) documentation of plan terms (including benefits, cost sharing, employer contributions, and annual limits) under the prior health insurance coverage sufficient to make a determination whether the standards of paragraph (g)(1) of the final regulations are exceeded.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0140. The current approval is scheduled to expire on May 31, 2025.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Affordable Care Act Advance Notice of Rescission.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0141.

Affected Public: Private sector, Business or other for profits, Not-for-profit institutions.

Respondents: 100.

Responses: 1,744.

Estimated Total Burden Hours: 19.

Estimated Total Burden Cost (Operating and Maintenance): \$230.

Description: The Patient Protection and Affordable Care Act, Public Law 111–148, (the Affordable Care Act or the Act) was enacted on March 23, 2010. Section 2712 of the Public Health Service Act (PHS Act), as added by the Affordable Care Act, and the Department's final regulation (26 CFR 54.9815–2712, 29 CFR 2590.715–2712, 45 CFR 147.2712) provides rules regarding rescissions of health coverage for group health plans and health insurance issuers offering group or individual health insurance coverage (80 FR 72191). Under the statute and final regulations, a group health plan, or a health insurance issuer offering group or individual health insurance coverage, generally must not rescind coverage except in the case of fraud or an intentional misrepresentation of a material fact. This standard applies to all rescissions, whether in the group, or individual insurance market, or for self-insured coverage. These rules also apply regardless of any contestability period of the plan or issuer.

The PHS Act section 2712 mandated a new advance notice requirement when coverage is rescinded where still permissible. Specifically, the second sentence in section 2712 provides that coverage may not be cancelled unless prior notice is provided, and then only as permitted under PHS Act sections 2702(c) and 2742(b). Under these final

regulations, even if prior notice is provided, rescission is only permitted in cases of fraud, or an intentional misrepresentation of a material fact as permitted under the cited provisions.

These final regulations provide that a group health plan, or health insurance issuer offering group health insurance coverage, must provide at least 30 days advance notice to an individual before coverage may be rescinded. The notice must be provided regardless of whether the rescission is of group or individual coverage; or whether, in the case of group coverage, the coverage is insured or self-insured, or the rescission applies to an entire group or only to an individual within the group.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0141. The current approval is scheduled to expire on May 31, 2025.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Affordable Care Act Internal Claims and Appeals and External Review Procedures for ERISA Plans.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0144.

Affected Public: Private sector, Business or other for profits, Not-for-profit institutions.

Respondents: 2,007,298.

Responses: 390,574.

Estimated Total Burden Hours: 19,047.

Estimated Total Burden Cost (Operating and Maintenance): \$602,026.

Description: The Patient Protection and Affordable Care Act, Public Law 111–148, (the Affordable Care Act or the Act) was enacted on March 23, 2010. As part of the Act, Congress added Public Health Service Act (the PHS Act) section 2719, which provides rules relating to internal claims and appeals and external review processes. The Department of Labor, Internal Revenue Service, and the Health and Human Services Department (the Departments) issued final regulations (80 FR 72191) that set forth rules implementing PHS Act section 2719 for internal claims and appeals and external review processes. With respect to internal claims and appeals processes for group health coverage, PHS Act section 2719 and paragraph (b)(2)(i) of the final regulations provide that group health plans and health insurance issuers offering group health insurance coverage must comply with the internal claims and appeals processes set forth in 29 CFR 2560.503–1 (the DOL claims procedure regulation) and update such

processes in accordance with standards established by the Secretary of Labor in paragraph (b)(2)(ii) of the regulations.

The DOL claims procedure regulation requires plans to provide every claimant who is denied a claim with a written or electronic notice that contains the specific reasons for denial, a reference to the relevant plan provisions on which the denial is based, a description of any additional information necessary to perfect the claim, and a description of steps to be taken if the participant or beneficiary wishes to appeal the denial. The regulation also requires that any adverse decision upon review be in writing (including electronic means) and include specific reasons for the decision, as well as references to relevant plan provisions. Paragraph (b)(2)(ii)(C) of the final regulations adds a requirement that non-grandfathered ERISA-covered group health plans provide to the claimant, free of charge, any new or additional evidence considered relied upon, or generated by the plan or issuer in connection with the claim.

In addition, the PHS Act section 2719 and the final regulations provide that group health plans and issuers offering group health insurance coverage must comply either with a State external review process or a Federal review process. The regulations provide a basis for determining when plans and issuers must comply with an applicable State external review process and when they must comply with the Federal external review process.

The No Surprises Act extends the balance billing protection related to external reviews to grandfathered plans. The definitions of group health plan and health insurance issuer that are cited in section 110 of the No Surprises Act include both grandfathered and non-grandfathered plans and coverage. Accordingly, the practical effect of section 110 of the No Surprises Act is that grandfathered health plans must provide external review for adverse benefit determinations involving benefits subject to these surprise billing protections.

The claims procedure regulation imposes information collection requirements as part of the reasonable procedures that an employee benefit plan must establish regarding the handling of a benefit claim. These requirements include third-party notice and disclosure requirements that the plan must satisfy by providing information to participants and beneficiaries of the plan.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0144. The

current approval is scheduled to expire on May 31, 2025.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Summary of Benefits and Coverage and Uniform Glossary Required Under the Affordable Care Act.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0147.

Affected Public: Private sector, Business or other for profits, Not-for-profit institutions.

Respondents: 2,007,766.

Responses: 80,182,298.

Estimated Total Burden Hours: 313,490.

Estimated Total Burden Cost (Operating and Maintenance): \$7,605,988.

Description: The Patient Protection and Affordable Care Act, Pub. L. 111–148, was signed into law on March 23, 2010, and the Health Care and Education Reconciliation Act of 2010, Pub. L. 111–152, was signed into law on March 30, 2010 (collectively known as the “Affordable Care Act”). The Affordable Care Act amends the Public Health Service Act (PHS Act) by adding section 2715 “Development and Utilization of Uniform Explanation of Coverage Documents and Standardized Definitions.”

Each group health plan and health insurance issuer offering group insurance coverage must provide a summary of benefits and coverage to plans and participants at specified points in the enrollment process. This disclosure must include, among other things, coverage examples that illustrate common benefits scenarios and related cost sharing. Additionally, plans and issuers must make the uniform glossary available in electronic form, with paper upon request, and provide 60 days advance notice of any material modifications in the plan or coverage.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0147. The current approval is scheduled to expire on May 31, 2025.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemptions for Multiple Employer Plans and Multiple Employer Apprenticeship Plans—PTE 1976–1, PTE 1977–10, PTE 1978–6.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0058.

Affected Public: Private sector, Business or other for profits, Not-for-profit institutions.

Respondents: 3,259.

Responses: 3,409.

Estimated Total Burden Hours: 815.

Estimated Total Burden Cost (Operating and Maintenance): \$0.

Description: The three prohibited transaction class exemptions (PTEs) included in this ICR, (1) PTE 76–1, (2) PTE 77–10, and (3) PTE 78–6, exempt certain types of transactions commonly entered into by “multiemployer” plans from certain of the prohibitions contained in sections 406 and 407(a) of ERISA. The Department determined that, in the absence of these exemptions, the affected plans would not be able to operate efficiently or to enter into routine types of transactions necessary for their operations. In order to ensure that the class exemptions for these necessary transactions meet the statutory standards, the Department imposed conditions contained in the exemptions that are information collections. The information collections consist of recordkeeping and third-party disclosures.

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0058. The current approval is scheduled to expire on June 30, 2025.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Notice for Health Reimbursement Arrangements Integrated with Individual Health Insurance Coverage.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0160.

Affected Public: Private sector, Business or other for profits, Not-for-profit institutions, Individuals or Households.

Respondents: 177,480.

Responses: 2,140,197.

Estimated Total Burden Hours: 53,131.

Estimated Total Burden Cost (Operating and Maintenance): \$24,831.

Description: On June 21, 2018, the Department published the Definition of Employer under Section 3(5) of ERISA—Association Health Plans final rule. On August 3, 2018, the Department of Labor, HHS and the Treasury Department (the Departments) published the Short-Term, Limited-Duration Insurance final rule. These final rules remove the prohibition on integrating health reimbursement arrangements (HRAs) with individual health insurance coverage, if certain

conditions are met. The final rules also set forth conditions under which certain HRAs are as limited excepted benefits. In addition, the Treasury Department and the IRS finalized rules regarding premium tax credit (PTC) eligibility for individuals offered coverage under an HRA integrated with individual health insurance coverage, and DOL finalized a safe harbor to provide HRA plan sponsors with assurance that the individual health insurance coverage that is integrated with an HRA would not become part of an ERISA plan if the conditions of the safe harbor are met. Finally, HHS finalized rules that provide a special enrollment period in the individual market for individuals who gain access to an HRA that is integrated with individual health insurance coverage or who are provided a qualified small employer health reimbursement arrangement (QSEHRA).

The following five information Collections are contained in the final rules: (1) Verification of Enrollment in Individual Coverage; (2) HRA Notice to Participants; (3) Notice to Participants that Individual Policy is not Subject to Title I of ERISA; (4) Participant Notification of Individual Coverage HRA of Cancelled or Discontinued Coverage; (5) Notice for Excepted Benefit HRAs. These information collections notify the HRA that participants are enrolled in individual health insurance coverage, help individuals understand the impact of enrolling in an HRA on their eligibility for the PTC, and help individuals understand that coverage is not subject to the rules and consumer protections of the Employee Retirement Income Security Act (ERISA).

The Department has received approval from OMB for this ICR under OMB Control No. 1210–0160. The current approval is scheduled to expire on June 30, 2025.

II. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the information collection; they will also become a matter of public record.

Signed at Washington, DC, this 2nd day of July, 2024.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2024–15030 Filed 7–8–24; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D–12073]

Proposed Exemption From Certain Prohibited Transaction Restrictions Involving Memorial Sloan Kettering Cancer Center (MSKCC or the Applicant) Located in New York, New York

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code) for the reinsurance of risks and the receipt of a premium by MSK Insurance US, Inc. (the Captive), a captive insurance and reinsurance subsidiary that is wholly-owned by MSKCC, in connection with a single premium group insurance contract sold by an unrelated fronting insurer (the Fronting Insurer) to provide pension annuities to Plan participants and beneficiaries if the conditions in Section III are met in conformance with the definitions in Section I.

DATES: If granted, this proposed exemption will be in effect on the date specified by the Department in a grant notice published in the **Federal Register**.

Comments due: Written comments and requests for a public hearing on the proposed exemption must be submitted to the Department by August 23, 2024.

ADDRESSES: All written comments and requests for a hearing should be

submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D-12073, via email to e-OED@dol.gov or online through <http://www.regulations.gov>. Any such comments or requests should be sent before the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue, NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department at (202) 693-8456. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Comments

Persons are encouraged to submit all comments electronically and not to follow their submissions with paper copies. Comments should state the nature of the person's interest in the proposed exemption and how the person would be affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A hearing request must state: (1) the name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and how the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing would be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if: (1) the hearing request does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

WARNING: All comments received will be included in the public record without change and may be made available online at <http://www.regulations.gov>, including any

personal information provided, unless the comment includes information claimed to be confidential, or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number), or confidential business information that you do not want publicly disclosed. If EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment.

Additionally, the <http://www.regulations.gov> website is an "anonymous access" system, which means EBSA will not know your identity or contact information unless you provide such information in the body of your comment. If you send an email directly to EBSA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Background

Under the proposed exemption, the Memorial Sloan Kettering Cancer Center Pension Plan (the Plan) would enter into a single premium group annuity insurance contract (the GAC) with an unrelated insurance company (the Fronting Insurer) who would be selected by an independent fiduciary in compliance with the requirements of the Department's Interpretive Bulletin 95-1.¹ The Fronting Insurer would, in turn, enter into a reinsurance contract (the Reinsurance Arrangement) with MSK Insurance US, Inc. (MSK US or the Captive), a captive reinsurer that is wholly owned by MSKCC, the Plan sponsor. Under the Reinsurance Arrangement, MSK US would reinsure 100 percent of the Plan's risks. Importantly, the Fronting Insurer would remain fully responsible for the benefits of participants and beneficiaries for the entire duration of the GAC and Reinsurance Arrangement if MSK US does not fulfill its contractual obligations to the Fronting Insurer, without any caveats, contingencies, or conditions that would relieve or limit the Fronting Insurer's contractual obligation to pay benefits to the Plan's participants and beneficiaries.

In connection with the Reinsurance Arrangement, all Plan participants and beneficiaries would receive an increase to their monthly pension benefit that is currently expected to be 5.37 percent.² The Department expects that this benefit increase would add a total of \$64,440,000 in additional benefits to the Plan's participants and beneficiaries in the form of a 5.37 percent increase to their monthly annuity payment for the rest of their lives. Importantly, this increase will remain in place for the entirety of Plan participants' and beneficiaries' lives and, as a condition of this exemption, MSKCC would not reduce any benefits that employees receive from MSKCC, including the benefits Plan participants receive from the Plan, as a result of the Reinsurance Arrangement described in this proposed exemption. Absent this exemption, participants and beneficiaries would not receive this benefit increase.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA section 408(a) and Code section 4975(c)(2) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (75 FR 66637, 66644, October 27, 2011).³ If

² As discussed in more detail below, the exemption requires that Plan participants and beneficiaries receive the majority of the benefits derived from the Reinsurance Arrangement. While, as noted above, it is "currently expected" that a 5.37% increase in Plan's participants' and beneficiaries' monthly pension benefits will achieve this objective, the exact percentage increase needed to ensure that Plan participants and beneficiaries receive the majority of the benefits derived from the proposed arrangement will not be known until the Plan actually enters into the GAC, which will occur after the Fronting Insurer is selected by Fiduciary Counselors, the independent fiduciary appointed to solicit bids and select the Fronting Insurer in accord with the requirements of IB 95-1. As described in further detail below, once the Plan enters into the GAC, Milliman, a second independent fiduciary acting solely on behalf of the Plan, must determine, based on objective data, that the Plan participants' and beneficiaries' monthly pension benefits have been increased by a percentage that ensures they will receive the majority of the benefits derived from the Reinsurance Arrangement. The methodology for making this calculation is discussed below. Milliman as independent fiduciary must, among other things, calculate and demonstrate to the Department in a written report that Plan participants and beneficiaries received the appropriate percentage increase in their monthly pension benefits. The written report of the independent fiduciary would be available to the publicly contacting EBSA's Public Disclosure Office and referencing Exemption Application D-12073.

³ For purposes of this proposed exemption: (1) references to specific provisions of ERISA Title I, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code section 4975; and (2) if granted, this proposed exemption does not provide relief from the requirements of any law not noted above. Accordingly, the Applicant is responsible for

¹ 29 CFR 2509.95-1.

the proposed exemption is granted, the Plan will purchase the GAC from an unrelated Fronting Insurer, and the Fronting Insurer will, in turn, enter into a reinsurance contract with MSK US.

As described below, MSKCC is expected to receive a financial benefit from this exemption that will equal approximately \$126,444,000. This exemption would require MSKCC to ensure that Plan participants and beneficiaries will receive the majority of that derived benefit in the form of a uniform percentage increase to the monthly retirement benefit of all participants and beneficiaries. Currently, the Department expects that MSKCC would implement a 5.37% increase in each participant's and beneficiary's monthly annuity payment. This benefit increase will continue, without reduction, for the lifetime of each participant and beneficiary until the final annuitant is paid their final monthly annuity payment under the GAC.

This proposed exemption also would require MSKCC to delegate fiduciary oversight of the Plan and Reinsurance Arrangement to a qualified fiduciary who is independent of MSKCC and MSKCC's affiliates (the Independent Fiduciary). Among other things, the Independent Fiduciary must approve the Reinsurance Arrangement in advance, ensure that the Reinsurance Arrangement is in the interest of and protective of the Plan's participants and beneficiaries, and submit written annual reports to the Department confirming that MSKCC has met all of the exemption's conditions.⁴

This exemption would provide relief from certain restrictions described in ERISA section 406 and Code section 4975(c)(1). These restrictions are discussed below. No relief or waiver of a violation of any other law is provided by the exemption. When interpreting and implementing this exemption, MSKCC, the Captive, the Independent Fiduciary, and the Fronting Insurer would resolve any ambiguities by considering the exemption's protective purposes. To the extent additional clarification is necessary, these persons or entities should immediately contact

ensuring compliance with any other laws applicable to the transactions described herein.

⁴ The Department notes that the Independent Fiduciary's annual written reports are essential to the Department's tentative finding that this proposed exemption is, and will continue to be, in the interest of and protective of the Plan and its participants and beneficiaries. The Independent Fiduciary must clearly, prudently, and loyally determine whether MSKCC and its affiliates have complied with each term and condition of the exemption and include its findings in its reports.

EBSA's Office of Exemption Determinations at 202-693-8540.

Summary of Facts and Representations⁵

Memorial Sloan Kettering Cancer Center

1. MSKCC is a cancer center that is committed to patient care, research, and educational programs. Headquartered in New York City, MSKCC had 29,732 employees as of December 31, 2022. MSKCC's total operating revenue in 2022 was approximately \$6.63 billion, with net assets of \$8.74 billion. MSKCC is a non-profit entity designated as a 501(c)(3) organization.

The Plan

2. The Plan is a defined benefit pension plan that provides retirement and death benefits for eligible participants. Under the Plan, the normal form of payment for an unmarried participant is a single-life annuity, and the normal form of payment for a married participant is a joint and 50% survivor annuity. The Plan administrator and named fiduciary is the MSK Executive Benefits Committee and the Plan trustee is JPMorgan Chase. In 2012, MSKCC amended the Plan to close enrollment to employees hired on or after December 16, 2012. In 2020, MSKCC amended the Plan to freeze future benefit accruals effective December 20, 2020. As of December 31, 2022, the Plan covered 8,263 participants and held \$1,347,320,040 in total assets.

The Captive

3. MSK US is MSKCC's wholly-owned captive insurance and reinsurance subsidiary. MSK US was organized on August 21, 2003, to provide coverage to operating subsidiaries of MSKCC, and on August 28, 2003, received a Certificate of Authority to transact insurance business in the State of Vermont. MSK US insures the property and equipment of MSKCC. Today, MSK US writes approximately \$75 million in premiums and has expanded its business to include other insurance product lines for MSKCC, such as

⁵ The Summary of Facts and Representations is based on the Applicant's representations provided in its exemption application and does not reflect factual findings or opinions of the Department unless indicated otherwise. The Department notes that the availability of this exemption is subject to the express condition that the material facts and representations contained in application D-12073 are true and complete at all times, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change.

warranty coverage for health care equipment and bio-medical health care equipment, group life insurance, and group long-term disability insurance. In December 2008, MSKCC received a prohibited transaction exemption from the Department that permits MSK US to reinsure the risks of MSKCC's Group Term Life and Long Term Disability Programs (PTE 08-22E).⁶

MSK Employee Benefits IC (MSK EB) is a segregated cell within MSK US that will be used to reinsure the risks related to the Reinsurance Arrangement and this exemption. While MSK US will contract with the Fronting Insurer as part of the Reinsurance Arrangement, MSK EB will hold the reserves that will be used to pay benefits to the Plan's participants and beneficiaries under the GAC. MSK US and MSK EB are collectively referred to herein as "the Captive."

The Reinsurance Arrangement

4. The transaction at issue involves the purchase by the Plan of the GAC from an unrelated Fronting Insurer, and the reinsurance of the GAC through the Captive. The Plan has engaged Milliman, Inc. (Milliman) to serve as its Independent Fiduciary with respect to the Reinsurance Arrangement (the Independent Fiduciary).

Fiduciary Counselors Inc. and the Selection of the Fronting Insurer

5. MSKCC has engaged Fiduciary Counselors Inc. of Washington, DC to select a Fronting Insurer with respect to the Reinsurance Arrangement based on a competitive bidding process. The Applicant represents that Fiduciary Counselors will send requests for proposals to potential Fronting Insurers and will then select a Fronting Insurer in compliance with the Department's Interpretive Bulletin (IB) 95-1,⁷ which provides several factors that fiduciaries must consider to ensure they select the safest annuity available for a plan.⁸ The

⁶ The Fronting Insurers under PTE 08-22E are Prudential Insurance Company of America and First Unum Life Insurance Company.

⁷ Fiduciary Counselors must submit a written representation in writing to the Department's Office of Exemption Determinations that the selection of the Fronting Insurer met the requirements of IB 95-1 and also that it would have been consistent with IB 95-1 to select the Fronting Insurer as the insurer for a final termination buy-out annuity had MSKCC adopted that approach.

⁸ 29 CFR 2509-95-1. As stated in IB 95-1, when conducting a search, a fiduciary must evaluate a number of factors relating to a potential annuity provider's claims-paying ability and creditworthiness. Reliance solely on ratings provided by insurance rating services would not be sufficient to meet this requirement. In this regard, the types of factors a fiduciary should consider would include, among other things: (a) the quality and diversification of the annuity provider's

Fronting Insurer ultimately selected by Fiduciary Counselors must be unrelated to MSKCC. Given the importance of a highly rated Fronting Insurer to the security of the pension benefits provided to the Plan's participants and beneficiaries, Fiduciary Counselors must provide the Department with a written submission that identifies the Fronting Insurer selected along with a written representation detailing the methodology that it used to select the Fronting Insurer and how that methodology, and the Fronting Insurer selected, met the requirements of IB 95–1. Fiduciary Counselors also must represent to the Department that it would have been consistent with IB 95–1 to select the Fronting Insurer as the insurer for a final termination buy-out annuity, had MSKCC adopted that approach. This information will be available to the public as part of the record attributable to D–12073.

Mechanics of the Reinsurance Arrangement

6. The Plan would purchase the GAC from the Fronting Insurer by using current Plan assets (including an in-kind transfer) to pay a one-time premium amount to the Fronting Insurer. The Fronting Insurer would simultaneously enter into an indemnity reinsurance contract with the Captive, which would cede the Plan's risk from the Fronting Insurer to the Captive. Subsequently, the Fronting Insurer would transfer the premium amount paid by the Plan to the Captive where it would be held in reserve within the captive cell (MSK EB) throughout the duration of the Reinsurance Arrangement. The GAC would cover all of the Plan's liabilities and have two phases: (1) a Buy-In Phase and (2) a Buy-Out Phase that are explained below.

Buy-In Phase: During the Buy-in Phase, the Plan would hold the GAC as a plan asset. This means that the Fronting Insurer and Captive would guarantee the payment of Plan benefits and the Plan would remain in place. During the Buy-In Phase, the payment of the participants' and beneficiaries' benefits would be secured by the Plan, the Plan Sponsor, ERISA, and the PBGC, while the Plan's funding of benefit

payments would be secured by the Fronting Insurer and Captive.

During the Buy-In Phase, the Fronting Insurer would send funds to the Plan Trustee (JPMorgan Chase) to make benefit distribution payments to the Plan's participants and beneficiaries and, every three months, the Fronting Insurer would submit payment requests to the Captive requesting reimbursement to cover participant and beneficiary distributions paid during the preceding three months and the Fronting Insurer's ongoing fees.⁹ If the Fronting Insurer and Captive fail to pay benefits during the Buy-In Phase, the Plan Sponsor would still be required to fund the Plan, and the Plan would still be required to pay all benefits due to participants and beneficiaries.

Following the purchase of the GAC, and while the Plan is still active, the Plan's fiduciaries would be obligated to manage all Plan assets, including those assets not used to purchase the GAC, solely in the interest of participants and beneficiaries and exclusively for their benefits. Any payments for Plan expenses that do not clearly and exclusively benefit participants and beneficiaries would be subject to additional scrutiny.

Buy-Out Phase: The GAC would contain a "conversion option" (the Conversion Option) that the Plan Sponsor could exercise (at any time) if and when it decides to terminate the Plan.¹⁰ If exercised, the Conversion Option would transition the GAC from the Buy-in Phase to the Buy-Out Phase,¹¹ and the following events would occur: (a) the GAC would no longer be held by the Plan as a Plan asset; (b) the Plan Sponsor would replace the Plan as the holder of the GAC; (c) the Fronting Insurer would issue annuity certificates to all Plan participants and beneficiaries; and (d) the Fronting Insurer would take complete control of the administration of the GAC and make benefit payments directly to the former Plan participants and beneficiaries that have become annuitants.¹² During the

Buy-Out Phase, the Captive would continue to hold the reserves and the Fronting Insurer would continue to provide quarterly reimbursement payment requests to the Captive to cover: (1) participant and beneficiary distributions paid by the Fronting Insurer over the preceding three months, plus (2) the Fronting Insurer's ongoing fees.

The relationship between the Fronting Insurer and Captive would remain the same during both the Buy-In and Buy-Out Phases; therefore, the Fronting Insurer would assume full responsibility for benefit obligations to participants and beneficiaries, without conditions or caveats, and the Captive would assume the reinsurance risk. Accordingly, both the Fronting Insurer and the Captive would assume full responsibility for making pension benefit payments to participants and beneficiaries throughout the duration of the Reinsurance Arrangement (during both the Buy-In and Buy-Out Phases). Thus, even after conversion to the Buy-Out phase, the Fronting Insurer and the Captive would remain 100 percent liable for making benefit payments to participants and beneficiaries.

As a condition of this exemption, the Fronting Insurer would be required to have a direct contractual relationship with the Plan during the Buy-In phase of the GAC and with the Plan's participants and beneficiaries after MSKCC exercises the Conversion Option under the GAC during the Buy-Out phase, without any caveats, contingencies, or conditions that would relieve or limit the Fronting Insurer's contractual obligation to pay benefits to the Plan's participants and beneficiaries in accordance with the terms of this exemption and the Plan.

Fees and Other Costs

7. Throughout the duration of the Reinsurance Arrangement, the Captive would pay fees to the Fronting Insurer that are based on a percentage of the reserve held by the Captive. The Applicant represents that the Fronting Insurer's fee would be less than one percent of the total reserve amount held by the Captive and would remain the same throughout the duration of the Reinsurance Arrangement. The Fronting Insurer's fees cover both the risk assumed by the Fronting Insurer to make benefit payments to participants and beneficiaries and the services the Fronting Insurer provides (including administering benefit payments during the Buy-Out Phase). All costs associated with the operation of the Captive would be paid by the Captive (or MSKCC) and not by the Plan. Further, no

investment portfolio; (b) the size of the insurer relative to the proposed contract; (c) the level of the insurer's capital and surplus; (d) the lines of business of the annuity provider and other indications of an insurer's exposure to liability; (e) the structure of the annuity contract and guarantees supporting the annuities, such as the use of separate accounts; and (f) the availability of additional protection through state guaranty associations and the extent of their guarantees.

⁹ See Representation 7 below for more information on the Fronting Insurer's fees.

¹⁰ This exemption would not relieve the Plan's fiduciaries from their express ERISA duties to manage the assets of the plan solely in the interest of the plan and its participants and beneficiaries, including when the fiduciaries are contemplating terminating the plan.

¹¹ The effective date of the conversion would be aligned with the Plan's termination (*i.e.*, the Conversion Option will be exercised only if and when the Plan terminates).

¹² As a condition of this exemption, after the Buy-In phase for the Reinsurance Arrangement is completed and MSKCC exercises the Conversion Option, MSKCC will terminate the Plan in compliance with all applicable Code and ERISA requirements.

commissions would be associated with the Reinsurance Arrangement and no fees would be shared by the Fronting Insurer with MSKCC, the Captive, or any affiliates thereof.

Collateral Under the Reinsurance Agreement

8. As part of the Reinsurance Arrangement, the Captive would be collateralized by MSKCC, and all collateral will be separate and apart from the Plan assets used to purchase the GAC. The Applicant represents that the collateral would be distinct from the reserves and that pursuant to the GAC, MSKCC would establish a collateral account that the Fronting Insurer can access: (1) in the event the Captive fails to make a required quarterly payment to the Fronting Insurer; or (2) to reduce the financial risk that would arise if, for example, the Captive is holding too large a portion of the reserves in illiquid investments. The assets held in the collateral account would be legally owned by MSKCC, but the Fronting Insurer would have a statutory reserve credit on the assets.¹³ The collateral requirements will be determined by the Fronting Insurer and will be based on the reserve requirements mandated by the State of Vermont.

MSKCC would also provide a Parental Guarantee to the Captive and would provide cash as needed if the Captive's general and separate account asset balances were extinguished. In its Feasibility Report submitted to the Vermont Department of Financial Regulation (Vermont DFR), MSKCC noted that it has a substantial endowment of approximately \$6.4B that would provide the Parental Guarantee.

Oversight by the Vermont DFR

9. Before submitting this exemption request, the Captive requested and received formal approval from the Vermont DFR to enter into the Reinsurance Arrangement and operate the Captive to reinsure the Plan's pension benefits. The Vermont DFR issued its formal approval after reviewing the Captive's Feasibility Report, which included, among other

things, actuarial projections, an investment policy statement, and a business plan. If this exemption is granted and the Reinsurance Arrangement takes effect, the Captive would be required to submit an independent audit report and actuarial report to the Vermont DFR on an annual basis. Further, at least every five years, the Vermont DFR would conduct a thorough review of the Captive and issue an Exam Report.

This proposed exemption requires the Independent Fiduciary to obtain and review all independent audit reports and actuarial reports submitted by the Captive to the Vermont DFR as well as all Exam Reports issued to the Captive by the Vermont DFR. The Independent Fiduciary would be required to provide the Department with a detailed summary of each Exam Report in its annual Independent Fiduciary Reports, as described below. This proposed exemption also would require the Captive to request a Certificate of Good Standing from the Vermont DFR on an annual basis. Also, as part of this proposed exemption, MSKCC must provide the Department with any Exam Reports it receives no later than 30 days after MSKCC receives such report.

Investing the Reserves

10. The Captive would be required to invest the reserves in accordance with the regulations, and under the supervision, of the State of Vermont. Under Vermont state law all captives must file an annual audit report with the state insurance commissioner and such audit report must include the auditor's opinion as to the adequacy of the captive's reserves. In addition, the Fronting Insurer would have oversight of the reserves throughout the duration of the Reinsurance Arrangement.

Prohibition on Distributions From the Captive to MSKCC

11. The Applicant represents that the amount of the premium is expected to match the value of the Plan's liabilities and that no excess amounts will be transferred to the Fronting Insurer when the GAC is purchased. When the Fronting Insurer pays the premium to the Captive, the assets held by the Captive will be set aside to fund the liabilities under the GAC until all benefits are paid to participants and beneficiaries, which MSKCC expects will occur after more than 20 years.

Financial Benefit to MSKCC

12. The Applicant represents that purchasing the GAC in conjunction with the Reinsurance Arrangement is estimated to result in a ten percent

savings on the overall cost of purchasing the GAC without the Captive. For instance, if the single premium cost to acquire the GAC from the Fronting Insurer without the Captive was \$1.2 billion, the cost to acquire it with the Captive in place would be \$1.08 billion. Since the financial benefit of the cost reduction would ultimately flow to MSKCC, this exemption requires a majority of the cost reduction to purchase the GAC to be provided to the Plan's participants and beneficiaries in the form of a benefit enhancement to their monthly annuity payment, as described below.

The Applicant represents that because MSKCC is a non-profit entity, there will be no associated tax advantages flowing to MSKCC from the Reinsurance Arrangement.

The Primary Benefits Test

13. The proposed exemption requires the Plan to receive the majority of the financial benefits flowing from the Reinsurance Arrangement (the Primary Benefits Test). For the purposes of the Primary Benefits Test, the Independent Fiduciary must quantify all of the benefits derived from the Reinsurance Arrangement, including all benefits directly and indirectly received by MSKCC and any entity affiliated with MSKCC. The Primary Benefits Test requires MSKCC to provide Plan participants and beneficiaries with a meaningful benefit enhancement that must exceed 50 percent of the total financial benefit MSKCC derives from the Reinsurance Arrangement. So, for example, if the Independent Fiduciary determines that MSKCC will receive a total financial benefit of \$126,444,000 over the term of the Reinsurance Arrangement, the Independent Fiduciary would be required to ensure that MSKCC enhances the Plan's benefits that would be paid to participants and beneficiaries by more than 50 percent of that amount. Throughout the Reinsurance Arrangement, the Independent Fiduciary must continuously review and confirm that the majority of the financial benefits flowing from the Reinsurance Arrangement inure to the Plan's participants and beneficiaries.

MSKCC-Provided Benefit Enhancement

14. MSKCC represents that it would implement a one-time benefit increase sufficient to pass the Primary Benefits Test (the Benefit Enhancement). MSKCC represents that if the savings generated from the Captive Arrangement equals 10 percent, it will implement a Benefit Enhancement in the form of a 5.37

¹³ The Department understands that a statutory reserve is the amount of money, securities, or assets that must be set aside as a legal requirement by the Fronting Insurer to cover claims or obligations due. This pool of funds is called a statutory reserve because state laws and regulations require the Fronting Insurer to hold these funds in reserve on their balance sheet. A reserve credit is a financial statement credit to the Fronting Insurer for the reinsurance ceded by the Fronting Insurer to the Captive. The Fronting Insurer would receive a credit because the reserves and collateral would be held by the Captive. Thus, the Fronting Insurer will not have to carry the equivalent statutory reserve on its balance sheet.

percent¹⁴ increase to the monthly benefits of all Plan participants and beneficiaries that will continue without reduction for the remainder of their lives. Collectively, Plan participants and beneficiaries would receive \$64,440,000 in increased pension benefit payments, and Plan participants and beneficiaries would therefore receive the majority of the financial benefit derived from the Reinsurance Arrangement. So, for example, a participant with a monthly benefit of \$4,000 under the original plan terms would receive a 5.37 percent increase that would increase their monthly benefit payment to \$4,214.80 as a result of the Reinsurance Arrangement. This Benefit Enhancement will be applied uniformly to the monthly benefit of all of the Plan's participants and beneficiaries and will continue to be applied for the remainder of all of their lives.

MSKCC represents that: (1) apart from the conditions of this exemption, if granted, MSKCC otherwise had no preexisting obligation to provide a benefit increase to the Plan participants and beneficiaries; and (2) before its submission of the exemption application for this exemption, MSKCC had not considered or offered any increase to the current value of the benefits of the Plan's participants and beneficiaries.

The amount of the Benefit Enhancement must be adjusted to the extent that the Independent Fiduciary determines such an adjustment is necessary to pass the Primary Benefits Test. Ultimately, the Independent Fiduciary would determine the actual benefit to MSKCC from the proposed Reinsurance Arrangement and would ensure that the Plan's participants and beneficiaries receive the majority of that amount. The Applicant submits that the value of the Benefit Enhancement is transparent, easily determined, and simplifies compliance and oversight with respect to the terms of the exemption, if granted.

Independent Fiduciary

15. Milliman would serve as the Plan's Independent Fiduciary with respect to the Reinsurance Arrangement. Kathleen E. Ely of Milliman would perform the functions required of the independent fiduciary on behalf of Milliman with respect to the

requirements of this exemption, and Milliman's consultants, actuaries, and analysts would support this work. Ms. Ely and Milliman represent that they are independent of all parties associated with the Reinsurance Arrangement, including the Plan, MSKCC, and the Captive. Ms. Ely and Milliman do not have: (a) an interest in any party involved in the Reinsurance Arrangement; (b) any economic stake or financial interest that is contingent upon the implementation of the Reinsurance Arrangement; or (c) an ownership interest in MSKCC, the Captive, or the Fronting Insurer, nor are they directly or indirectly, controlled by, or under common control with them.

Milliman and Ms. Ely have acknowledged to the Department in writing that they accept the fiduciary obligations associated with the duties of the Independent Fiduciary and have agreed not to participate in any decisions with respect to any transaction in which they may have an interest that may affect their best judgment. Milliman represents that its gross income received from parties in interest to the Plan in connection with the Reinsurance Arrangement represents less than 0.1 percent of Milliman's gross annual income from all sources.

This proposed exemption requires the Applicant to represent that no party involved in this exemption transaction has or will indemnify Milliman or Ms. Ely in whole or in part for negligence and/or for any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties under the Reinsurance Arrangement. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violation. Further, as a condition of this proposed exemption, neither Milliman nor Ms. Ely will enter into any agreement or instrument that violates ERISA section 410 or 29 CFR 2509.75-4.¹⁵

Independent Fiduciary Duties

16. As the Plan's Independent Fiduciary, Milliman must represent the Plan in accordance with the obligations of prudence and loyalty under ERISA sections 404(a)(1)(A) and (B) and determine whether the Reinsurance Arrangement is in the interests of the

Plan's participants and beneficiaries. In this regard, before the GAC purchase and consummation of the Reinsurance Arrangement, Milliman must confirm that the Benefit Enhancement is sufficient to meet the Primary Benefits Test under this exemption.

Further, not later than 30 days after the purchase of the GAC and consummation of the Reinsurance Arrangement, Milliman must confirm to the Department in writing that all terms and conditions of the exemption have been met (or, due to timing requirements, can reasonably be expected to be met consistent with the terms of this proposed exemption). This confirmation must include copies of each document relied on and the steps taken to make this determination. In this written determination, the Independent Fiduciary must confirm the actual cost savings associated with the Reinsurance Arrangement by obtaining documentation from the Fronting Insurer that compares the cost to purchase the GAC without the Captive in place to the cost to purchase the GAC with the Captive in place. The Independent Fiduciary must include this documentation from the Fronting Insurer with its written determination to the Department.

Milliman would be required to continue monitoring, enforcing, and ensuring compliance with all conditions of this exemption throughout the duration of the Reinsurance Arrangement, including all conditions and obligations imposed on any party dealing with the Plan, and report any instance of non-compliance immediately to the Department's Office of Exemption Determinations. Milliman must also take all appropriate actions to safeguard the interests of the Plan and its participants and beneficiaries, and review all contracts pertaining to the Reinsurance Arrangement, and any renewals of such contracts, to determine whether the requirements of this proposed exemption and the terms of Benefit Enhancement continue to be satisfied.

Throughout the duration of the Reinsurance Arrangement, Milliman would be required to submit written annual Independent Fiduciary Reports to the Department certifying under penalty of perjury whether each term and condition of the exemption has been met over the applicable period. Each report would be: (a) completed within six months after the end of the twelve-month period to which it relates (the first twelve-month period would begin on the effective date of the exemption grant); and (b) submitted to the Department within 60 days

¹⁴ The formula underlying the 5.37 percent calculation is based on the actual percentage of savings in the annuity purchase, including the value of the pension benefit enhancement. All details regarding the formula used to calculate the Benefit Enhancement are included in the exemption application file and available to the public upon request.

¹⁵ ERISA section 410 provides, in part, that "except as provided in ERISA sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning Part 4 of Title I of ERISA] shall be void as against public policy."

thereafter. In preparing the Independent Fiduciary Report, Milliman must review: (a) the Captive's annual audit and actuarial reports as submitted to the Vermont DFR; (b) any Certificate of Good Standing received by the Captive; and (c) any Exam Report completed by the Vermont DFR.

Finally, the Independent Fiduciary must monitor and ensure that any assets that remain in the Plan during the Buy-In phase of the Reinsurance Arrangement are managed and used exclusively to provide benefits to Plan participants and beneficiaries and to defray reasonable expenses of administering the Plan in compliance with ERISA sections 403(c)(1) and 404(a)(1)(A).

The Independent Fiduciary Report

17. On June 27, 2023, Ms. Ely completed an Independent Fiduciary Report in which she confirms that the Benefit Enhancement would provide the Plan's participants and beneficiaries with the majority of the benefits derived from the Reinsurance Arrangement. Ms. Ely confirms that the Benefit Enhancement will be provided to all Plan participants and beneficiaries at no cost to them, and that MSKCC will not offset the cost of the Benefit Enhancement by making any corresponding reductions to other benefits already received by participants and beneficiaries. Ms. Ely also affirms that the Plan will pay no more than adequate consideration for the GAC and that no commissions will be payable with respect to the GAC or the Reinsurance Arrangement.

In the Independent Fiduciary Report, Ms. Ely states the purchase of the GAC to fund the Plan's participant and beneficiary pension benefit payments will protect the participants and beneficiaries from investment risk that may impact the reserves used to fund future distributions. With the GAC and Reinsurance Arrangement in place, participant and beneficiary pension benefit payments will be guaranteed by the Fronting Insurer, with an additional layer of security provided by the Captive.

Also in her Report, Ms. Ely confirms that the Captive was organized as a captive insurer in the State of Vermont on August 28, 2003, and that under Vermont captive insurance law captives may conduct reinsurance operations. Ms. Ely confirms further that on June 22, 2023, she received written confirmation from the Vermont DFR that the Captive has an active license, is in good standing, and underwent an examination by an independent

certified public accounting firm for the fiscal year ending December 31, 2022.

ERISA Analysis

18. MSKCC is a party in interest with respect to the Plan pursuant to ERISA section 3(14)(C) because it is an employer whose employees are covered by the Plan. In addition, the Captive is a party in interest with respect to the Plan pursuant to ERISA section 3(14)(G)¹⁶ because it is wholly owned by MSKCC.

ERISA section 406(a) prohibits a wide variety of transactions between plans and parties in interest. For example, ERISA section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction that results in the transfer of plan assets to a party in interest. The Reinsurance Arrangement would violate ERISA section 406(a)(1)(D) because it would result in the premium payment used to purchase the GAC (which consists of plan assets) being transferred indirectly from the Plan, via the Fronting Insurer, to the Captive, a party in interest to the Plan.

ERISA section 406(b)(1) prohibits a fiduciary from dealing with plan assets for its own interest or own account, ERISA section 406(b)(2) prohibits a fiduciary from acting in any transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan, and ERISA section 406(b)(3) prohibits a fiduciary from receiving any consideration for the fiduciary's personal account from any party dealing with the plan in connection with a transaction involving the plan's assets. The MSK Executive Benefits Committee is comprised of individuals who also serve as officers of MSKCC. The Reinsurance Arrangement would thus raise issues under ERISA sections 406(b)(1), (b)(2), and (b)(3) because the plan fiduciaries on the Committee would cause the Plan premium to be paid to the Fronting Insurer with the understanding that Fronting Insurer will enter into a reinsurance arrangement with, and the Plan premium will ultimately be paid to, the Captive.

Statutory Findings

19. Based on the conditions included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant

¹⁶ Under ERISA section 3(14)(G), a corporation is a "party in interest" with respect to an employee benefit plan if 50 percent or more of the combined voting power of all classes of the corporation's stock entitled to vote, or the total value of shares of all classes of stock of the corporation, is owned by an employer any of whose employees are covered by the employee benefit plan.

would satisfy the statutory requirements for an exemption under ERISA section 408(a).

20. *The Proposed Exemption is "Administratively Feasible."* The Department has tentatively determined that this proposed exemption is administratively feasible for the Department. This determination is based on the Department's understanding that the Independent Fiduciary will provide important oversight with respect to the Reinsurance Arrangement and will represent the Plan throughout the duration of the Reinsurance Arrangement by monitoring, enforcing, and ensuring compliance with all conditions of this exemption. This proposed exemption also requires the Independent Fiduciary to submit annual written reports to the Department confirming that all conditions of this exemption have been met. This determination is also based upon the Department's understanding that the Vermont DFR will provide meaningful ongoing oversight of the Captive's operations.

21. *The Proposed Exemption is "In the Interest of the Plan and its Participants and Beneficiaries."* The Department has tentatively determined that the proposed exemption is in the interest of the Plan and its participants and beneficiaries. The Department notes that the Benefit Enhancement represents significant value that will apply equally across the Plan and help MSKCC's more than 8,000 participants and beneficiaries enjoy a more secure retirement. Importantly, the Department notes that the Plan is not conceding anything in exchange for the Benefit Enhancement because, as confirmed by the Independent Fiduciary, MSKCC will not make any corresponding reductions to other benefits the Plan currently provides to the Plan's participants and beneficiaries.

22. *The Proposed Exemption is "Protective of the Rights of the Plan's Participants and Beneficiaries."* The Department has tentatively determined that the proposed exemption is protective of the rights of the Plan's participants and beneficiaries. The selection of the Fronting Insurer by Fiduciary Counselors is critical to the Department's finding that the proposed exemption is protective of the rights of participants and beneficiaries. The Department would not have proposed this exemption without a requirement that Fiduciary Counselors provides the Department with a written submission that identifies the Fronting Insurer selected along with a written representation detailing the

methodology that it used to select the Fronting Insurer and how that methodology, and the Fronting Insurer selected, meets the requirements of IB 95–1.

In addition, the Department notes that the Captive would guarantee to pay the annuitized Plan benefits, which would provide a second layer of protection for the Plan's participants and beneficiaries that would not exist if only the Fronting Insurer were insuring the benefits. Finally, the Department notes that the Independent Fiduciary will represent the Plan's interests for all purposes with respect to the Reinsurance Arrangement and will: (1) monitor, enforce, and ensure compliance with the exemption conditions, in accordance with its obligations of prudence and loyalty under ERISA; (2) report any instance of non-compliance immediately to the Department; and (3) submit written annual reports to the Department throughout the Reinsurance Arrangement.

Summary

23. Based on compliance with the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an individual exemption under ERISA section 408(a) and Code section 4975(c)(2).

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within fifteen (15) days of the publication of the notice of this proposed exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner approved by the Department and will contain the documents described therein and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty-five (45) days of the date of publication of this proposed exemption in the **Federal Register**. All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an

unlisted phone number), or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and/or Code section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA section 408(a) and/or Code section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption would be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is, in fact, a prohibited transaction; and

(4) The Department notes that all of the material facts and representations set forth in the Summary of Facts and Representations must be true and accurate at all times and that the relief provided herein is conditioned upon the veracity of all material representations made by the Applicant.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA section 408(a) and Internal Revenue Code (or Code) section 4975(c)(2) in accordance with the Department's exemption procedures

regulation.¹⁷ Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested by the Applicant to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

Section I. Definitions

(a) An "affiliate" of MSKCC or MSK US includes: (1) any person or entity who controls MSKCC or MSK US or is controlled by or under common control with MSKCC or MSK US; (2) any officer, director, employee, relative, or partner with respect to MSKCC or MSK US; and (3) any corporation or partnership of which a person described in (2) above in this paragraph is an officer, director, partner, or employee;

(b) The term "Benefit Enhancement" means the benefit increase, as determined by the Independent Fiduciary based upon the Primary Benefits Test, that will be applied equally to all participants and beneficiaries across the Plan and last throughout the duration of the group annuity contract (the GAC) and Reinsurance Arrangement.

(c) The term "Captive" means MSK Insurance US, Inc. a captive insurance and reinsurance subsidiary that is wholly-owned by MSKCC, and MSK Employee Benefits IC, a segregated cell within MSK Insurance US, Inc., that will be used to reinsure the risks related to the Reinsurance Arrangement and are domiciled in the state of Vermont.

(d) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual; and

(e) The term "Independent Fiduciary" means a person who:

(1) Is not MSKCC or an affiliate of MSKCC, or the Captive and does not hold an ownership interest in MSKCC, the Captive, or their affiliates;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that:

(i) It is a fiduciary and has agreed not to participate in any decision with respect to any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) Has appropriate technical training or experience to perform the services

¹⁷ 29 CFR part 2570, subpart B (75 FR 66637 October 27, 2011). For purposes of this proposed exemption, references to ERISA section 406, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code section 4975.

contemplated by this proposed exemption;

(4) For purposes of this definition, no organization or individual may serve as Independent Fiduciary for any fiscal year if the gross income received by such organization or individual from MSKCC, the Captive, or their affiliates for that fiscal year exceeds two percent of such organization's or individual's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department;

(5) No organization or individual that is an Independent Fiduciary and no partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder may acquire any property from, sell any property to, or borrow any funds from MSKCC, the Captive, or their affiliates while the individual serves as an Independent Fiduciary. This prohibition would continue for a period of six months after the party ceases to be an Independent Fiduciary and/or the Independent Fiduciary negotiates any transaction on behalf of the Plan during the period that the organization or individual serves as an Independent Fiduciary; and

(6) In the event a successor Independent Fiduciary is appointed to represent the interests of the Plan with respect to the subject transaction, no time should elapse between the resignation or termination of the former Independent Fiduciary and the appointment of the successor Independent Fiduciary.

Section II. Covered Transactions

This exemption would provide relief from the prohibited transactions provisions of ERISA sections 406(a)(1)(D), 406(b)(1), (b)(2), and (b)(3), and the excise tax imposed by Code section 4975(a) and (b) (due to the operation of parallel prohibited transaction provisions contained in Code section 4975(c)(1) (D), (E), and (F)) with respect to: (1) the reinsurance of risks; and (2) the receipt of a premium by the Captive in connection with a single premium group insurance contract sold by an unrelated fronting insurer (the Fronting Insurer) to provide pension annuities to Plan participants and beneficiaries. To receive this relief, the conditions in Section III must be

met in conformance with the definitions in Section I.

Section III. Conditions

(a) MSKCC must improve the Plan by amending the Plan document to provide a universal, benefit increase to all participants and beneficiaries that will apply immediately once the GAC is purchased and will continue with no reduction or offsets for the remainder of the participants and beneficiaries' lives (the Benefit Enhancement). The additional benefit provided by the Benefit Enhancement to participants and beneficiaries must be greater than 50 percent of the total benefit, including cost savings, derived by MSKCC from the Reinsurance Arrangement (the Primary Benefits Test). Stated another way, MSKCC cannot derive a greater benefit from the Reinsurance Arrangement than the Plan's participants and beneficiaries;

(b) Following the Plan's purchase of the GAC from the Fronting Insurer and the consummation of the Reinsurance Arrangement between the Fronting Insurer and the Captive, the Independent Fiduciary must determine in writing whether the Primary Benefits Test has been met. The Independent Fiduciary must submit this written determination to the Department within 30 days after the consummation of the Reinsurance Arrangement. In this written determination, the Independent Fiduciary must confirm the actual cost savings associated with the Reinsurance Arrangement by obtaining documentation from the Fronting Insurer that compares the cost to purchase the GAC without the Captive in place to the cost to purchase the GAC with the Captive in place. The Independent Fiduciary must include this documentation from the Fronting Insurer with its written determination to the Department;

(c) The Captive must:

(1) Be a party in interest with respect to the Plan based on an affiliation with MSKCC that is described in ERISA section 3(14)(G);

(2) Be licensed to sell insurance or conduct reinsurance operations in Vermont;

(3) Have obtained a Certificate of Authority from the Insurance Commissioner of Vermont to transact business as a captive insurance company and such certificate must not have been revoked or suspended;

(4) Have undergone a financial examination (within the meaning of the law of its domiciliary State, Vermont) by the Insurance Commissioner of Vermont within five years before the end of the

year preceding the year in which the reinsurance transaction occurred;

(5) Have undergone, and continue to undergo, an examination by an independent certified public accountant for its last completed taxable year immediately before the taxable year of the Reinsurance Arrangement covered by this proposed exemption; and

(6) Be licensed to conduct reinsurance transactions by a state whose law requires an actuarial review of reserves to be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(d) The Plan must pay no commissions with respect to the purchase of the GAC or the Reinsurance Arrangement;

(e)(1) The Fronting Insurer must be selected by Fiduciary Counselors, an independent fiduciary to the Plan, in compliance with the Department's Interpretive Bulletin 95-1 (29 CFR 2509-95-1). Before this proposed exemption is granted, Fiduciary Counselors must provide the Department with a written submission that identifies the Fronting Insurer selected, details the methodology used to select the Fronting Insurer, and explains how the methodology used, and the Fronting Insurer selected, meets the requirements of IB 95-1. Fiduciary Counselors must also represent in writing to the Department that it would have been consistent with IB 95-1 to select the Fronting Insurer as the insurer for a final termination buy-out annuity had MSKCC adopted that approach. To meet its fiduciary responsibility owed to the Plan's participants and beneficiaries to select and purchase the "safest available annuity," before selecting the Fronting Insurer, Fiduciary Counselors must evaluate such insurer's claims-paying ability and creditworthiness in full compliance with guidance provided in the Department's Interpretive Bulletin 95-1 (29 CFR 2509.95-1);

(f) (1) The Reinsurance Arrangement between MSK US and the Fronting Insurer must be indemnity insurance only and must not relieve the Fronting Insurer from any responsibility or liability to the Plan's participants and beneficiaries, including liability that would result if MSK US fails to meet any of its contractual obligations to the Fronting Insurer or any successor Fronting Insurer under the Reinsurance Arrangement;

(2) The Fronting Insurer must have a direct contractual relationship with the Plan during the Buy-In phase of the GAC and with the Plan's participants and beneficiaries after MSKCC exercises the Conversion Option under the GAC,

without any caveats, contingencies, or conditions that would relieve or limit the Fronting Insurer's contractual obligation to pay benefits to the Plan's participants and beneficiaries in accordance with the Plan and the terms of this exemption;

(g) MSKCC must not offset or reduce any benefits provided to Plan participants and beneficiaries in relation to its implementation of the Benefit Enhancement. In this regard, MSKCC must not implement any benefit cuts or offsets of any kind to the benefits the Plan provides to any Plan participant or beneficiary;

(h) The Independent Fiduciary must:

(1) In compliance with its fiduciary obligations of prudence and loyalty under ERISA sections 404(a)(1)(A) and (B): (i) review the Reinsurance Arrangement and the terms of the exemption; (ii) obtain and review all current objective, reliable, third-party documentation necessary to make the determinations required of the Independent Fiduciary by the exemption; and (iii) confirm in writing that all of the exemption's terms and conditions have been met (or, due to timing requirements, can reasonably be expected to be met consistent with the terms of the exemption) and send this confirmation to the Department's Office of Exemption Determinations not later than 30 days after the Captive enters into the Reinsurance Arrangement. In this written report, the Independent Fiduciary must also confirm that the Fronting Insurer selected and the methodology used by Fiduciary Counselors to make the selection meets the requirements of IB 95-1 and that it would have been consistent with IB 95-1 to select the Fronting Insurer as the insurer for a final termination buy-out annuity had MSKCC adopted that approach;

(2) Approve the Reinsurance Arrangement in advance and ensure that the Reinsurance Arrangement is in the interest of the Plan's participants and beneficiaries and protective of the Plan's participants and beneficiaries;

(3) Monitor, enforce, and ensure compliance with all conditions of this exemption in accordance with its obligations of prudence and loyalty under ERISA sections 404(a)(1)(A) and (B), including all conditions and obligations imposed on any party dealing with the Plan, throughout the period during which the Captive's assets are directly or indirectly used in connection with a transaction covered by this exemption;

(4) Represent and protect the interests of the participants and beneficiaries of the Plan during both the Buy-In and

Buy-Out Phases to ensure they receive everything that they are entitled to receive under this exemption, the terms of the Plan, and the GAC;

(5) Monitor and ensure that any assets that remain in the Plan during the Buy-In Phase of the Reinsurance Arrangement are managed and used exclusively to provide benefits to Plan participants and beneficiaries and to defray reasonable expenses of administering the Plan in compliance with ERISA sections 403(c)(1) and 404(a)(1)(A);

(6) Report any instance of non-compliance immediately to the Department's Office of Exemption Determinations;

(7) Take all appropriate actions to safeguard the interests of the Plan and its participants and beneficiaries; and

(8) Review all contracts pertaining to the Reinsurance Arrangement, and any renewals of such contracts, to determine whether the requirements of this proposed exemption and the terms of Benefit Enhancement continue to be satisfied;

(i)(1) The Independent Fiduciary must submit an annual Independent Fiduciary Report to the Department's Office of Exemption Determinations certifying under penalty of perjury whether each term and condition of the proposed exemption has been met over the applicable period. Each report must be completed within six months after the end of the twelve-month period to which it relates (the first twelve-month period would begin on the effective date of the exemption grant); and submitted to the Department's Office of Exemption Determinations within 60 days thereafter;

(2) In preparing the Independent Fiduciary Report, the Independent Fiduciary must:

(i) Review the Captive's annual audit and actuarial reports as submitted to the Vermont Department of Financial Regulation (Vermont DFR);

(ii) Review any Certificate of Good Standing received by the Captive;

(iii) Review Any Exam Report completed by the Vermont DRF and include a detailed summary of the Exam Report;

(iv) confirm that MSKCC has not reduced or offset any benefits in relation to its implementation of the Benefit Enhancement; and

(v) confirm that MSKCC has not reduced the Benefit Enhancement amount at any point during the year covered.

(3) Finally, the Independent Fiduciary must confirm in each Report that the Primary Benefits Test was met for the year covered. In this regard, the

Independent Fiduciary must determine the value of the Benefit Enhancement and the total value of the Reinsurance Arrangement to MSKCC, including cost savings, and confirm that MSKCC has not received any additional financial benefit that the Independent Fiduciary did not account for when it previously used the Primary Benefits Test to derive the Benefit Enhancement amount;

(j) Neither MSKCC nor any related entity may use participant or beneficiary-related data or information generated by or derived from the Reinsurance Arrangement in a manner that benefits MSKCC or a related entity;

(k) All the facts and representations set forth in the Summary of Facts and Representations must be true and accurate at all times;

(l) No party related to this exemption request has or will indemnify the Independent Fiduciary or Fiduciary Counselors, in whole or in part, for negligence and/or for any violation of state or federal law that may be attributable to the Independent Fiduciary's or Fiduciary Counselor's performance of its duties in connection with the Reinsurance Arrangement. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violations;

(m) MSKCC must provide the Department's Office of Exemption Determinations with all Exam Reports issued by the State of Vermont throughout the duration of the Reinsurance Arrangement within 30 days after such Exam Report is received;

(n) The Captive must request a Certificate of Good Standing from the State of Vermont on an annual basis;

(o) MSKCC must notify the Department's Office of Exemption Determinations if there is any change in the Captive's business plan, auditor, or the composition of its board of directors;

(p) MSKCC may not receive a dividend or any other form of distribution from the Captive at any point during the Reinsurance Arrangement;

(q) Following the discharge of all liabilities under the GAC (the Discharge Date), MSK Employee Benefits IC will determine the amount of assets, if any, that remain in MSK EB after all payments and distributions have been made to the Plan's participants and beneficiaries (the Excess Amount), and MSKCC will distribute the Excess Amount in conformity with the Primary Benefits Test within twelve months after the Discharge Date by remitting the majority of the Excess Amount (at least 50.1 percent) as an employer contribution to another ERISA-covered

employee benefit plan sponsored by MSKCC (without any benefit cuts or offsets to other benefits MSKCC provides to its employees) in a manner that does not discriminate in favor of highly compensated employees pursuant to standards set forth in sections 401(a)(4) and 410(b) of the Internal Revenue Code of 1986 (or under similar standards if these provisions no longer are in effect on the Discharge Date).

(r) MSKCC and the Captive must maintain all the records necessary to demonstrate that the conditions of this exemption have been met for a period of six years from the date of each record. MSKCC must provide these records to the Department's Office of Exemption Determinations within 30 days from the date of the Department's request;

(s) MSKCC must provide a Parental Guarantee to the Captive and provide cash as needed if the Captive's general and separate account asset balances have been extinguished;

(t) The Captive must invest the reserves in accordance with the regulations and under the supervision of the State of Vermont;

(u) MSKCC must amend the Plan document to memorialize the Benefit Enhancement and provide a copy of the amended plan document to the Department's Office of Exemption Determinations no later than 30 days after the date the Captive enters into the Reinsurance Arrangement;

(v) After the Buy-In phase for the Reinsurance Arrangement is completed and MSKCC exercises the Conversion Option, MSKCC will terminate the Plan in compliance with all applicable Code and ERISA requirements;

(w) MSKCC must notify the Department of any change in the independent fiduciary no later than 30 days after the engagement of a substitute or subsequent independent fiduciary and must provide an explanation for the substitution or change including a description of any material disputes between the terminated independent fiduciary and MSKCC; and

(x) Once the Benefit Enhancement percentage amount is set (in conformity with the Primary Benefits Test), MSKCC may not reduce that Benefit Enhancement percentage amount at any point.

Applicability Date: If granted, the exemption will be in effect on the date the Department publishes a grant notice in the **Federal Register**.

Signed at Washington, DC, this 2nd day of July 2024.

George Christopher Cosby,
*Director, Office of Exemption Determinations,
Employee Benefits Security Administration,
U.S. Department of Labor.*

[FR Doc. 2024-14961 Filed 7-8-24; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Monthly Employment Utilization Report (CC-257)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Federal Contract Compliance Programs (OFCCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before August 8, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202-693-6782, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The U.S. Department of Labor's (DOL) Office of Federal Contract Compliance Programs (OFCCP) is requesting Office of Management and Budget (OMB) review and approval of the Monthly Employment Utilization Report (CC-257). The proposed CC-257 would require covered construction contractors and subcontractors to submit monthly reports on their employee count and work hours by race/ethnicity, gender, and trade in the covered area.

OFCCP previously collected the CC-257 under OMB control number 1215-0163 but discontinued the report in 1995. Since that time, DOL restructured OFCCP as a stand-alone agency and OMB transferred OFCCP's information collections to OMB control numbers that begin with a "1250" agency code.

As such, OFCCP is requesting a new "1250" OMB control number for the CC-257 report. This information collection request (ICR) outlines the legal authority, procedures, burden, and costs associated with the collection. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 26, 2024 (89 FR 14109).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-OFCCP.

Title of Collection: Monthly Employment Utilization Report (CC-257).

OMB Control Number: 1250-ONEW.

Affected Public: Businesses or other for-profits.

Total Estimated Number of Respondents: 9,982.

Total Estimated Number of Responses: 119,784.

Total Estimated Annual Time Burden: 179,676 hours.

Total Estimated Annual Other Costs Burden: \$23,237.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,
Senior Paperwork Reduction Act Analyst.
[FR Doc. 2024–14958 Filed 7–8–24; 8:45 am]
BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Cranes and Derricks in Construction Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before August 8, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The collection of information contained in the Cranes and Derricks Standard codified at 29 CFR part 1926 subpart CC mandate that a covered employer produce and maintain records documenting controls and other measures taken to protect workers from hazards related to cranes and derricks used in construction. A construction business with workers who operate or work in the vicinity of cranes and derricks must have, as applicable, the following documents on file and available at the job site: equipment ratings, employee training records, written authorizations from qualified individuals, operator’s certification documents and qualification program audits. In addition, the standard for cranes and derricks in construction provides specific exemptions and clarifications with regard to the application of the standard to cranes

and derricks used for railway roadway work. These exemptions and clarifications recognize the unique equipment and circumstances in railway roadway work and reflect the preemption of some OSHA requirements by regulations promulgated by the Federal Railroad Administration. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 12, 2024 (89 FR 25903).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Cranes and Derricks in Construction Standard.

OMB Control Number: 1218–0261.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 213,400.

Total Estimated Number of Responses: 3,013,542.

Total Estimated Annual Time Burden: 429,483 hours.

Total Estimated Annual Other Costs Burden: \$2,811,282.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,
Certifying Official.
[FR Doc. 2024–14960 Filed 7–8–24; 8:45 am]
BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Portable Fire Extinguishers Standard (Annual Maintenance Certification Record)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before August 8, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The information collection requirement associated with the Portable Fire Extinguishers Standard is designed to reduce worker death or serious injury by ensuring that portable fire extinguishers are in safe operating conditions. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 11, 2024 (89 FR 25672).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and

(4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-OSHA.

Title of Collection: Portable Fire Extinguishers Standard (Annual Maintenance Certification Record).

OMB Control Number: 1218-0238.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 956,785.

Total Estimated Number of Responses: 956,785.

Total Estimated Annual Time Burden: 478,393 hours.

Total Estimated Annual Other Costs Burden: \$434,858,682.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,
Certifying Official.

[FR Doc. 2024-15029 Filed 7-8-24; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Experience Rating Report

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995

(PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before August 8, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202-693-6782, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The ETA-204 provides data to ETA for the study of seasonality, employment or payroll fluctuations, and stabilization, expansion or contraction in operations on employment experience. The data are used to provide an indication of whether solvency problems exist in the State’s Trust Fund accounts and in analyzing factors that give rise to solvency problems. The data are also used to complete the Experience Rating Index. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 14, 2024 (89 FR 11315).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-ETA.

Title of Collection: Experience Rating Report.

OMB Control Number: 1205-0164.

Affected Public: State, local, and Tribal governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 53.

Total Estimated Annual Time Burden: 26.5 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024-15028 Filed 7-8-24; 8:45 am]

BILLING CODE 4510-FN-P

MARINE MAMMAL COMMISSION

Sunshine Act Meetings

TIME AND DATE: The Marine Mammal Commission will hold a working meeting from 1:00 p.m. to 5:00 p.m. on Thursday 25 July 2024, with a break scheduled from 3:00–3:30 p.m. Members of the Committee of Scientific Advisors may participate in their individual capacities, but this is not a meeting of the Committee of Scientific Advisors on Marine Mammals for purposes of the Federal Advisory Committee Act. All portions of the meeting will be open to the public by Zoom Webinar.

PLACE: The Commissioners will convene remotely. Although a core of staff members will assemble for the meeting at the Marine Mammal Commission’s office, 4340 East-West Hwy, Room 700, Bethesda, Maryland 20814, no access to the office will be available for in-person participation by the public.

STATUS: All portions of the meeting will be open to the public via a Zoom Webinar. Those interested in participating will be required to register prior to joining the meeting at: https://www.zoomgov.com/webinar/register/WN_Roke2ffuQ2ykU14xLgSUVg. Public participation will be allowed as time permits and as determined to be desirable by the Chair.

The meeting agenda and webinar registration details will be posted on the

Commission's website (<https://www.mmc.gov/events-meetings-and-workshops>).

MATTERS TO BE CONSIDERED: The Commission intends to discuss and, as appropriate, formulate recommendations and make decisions regarding three subject areas—

- The focus of its FY 2025 Request for Proposals under the Commission's research grants program;
- A retrospective examination of the 1994 Amendments to the Marine Mammal Protection Act and additional actions needed to implement them; and
- Commission efforts to understand and address impacts of climate change on marine mammals.

CONTACT PERSON FOR MORE INFORMATION: Brady O'Donnell, Communications and Legislative Affairs Officer, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, MD 20814; (301) 504-0087; email: bodonnell@mmc.gov.

Dated: July 2, 2024.

Peter O. Thomas,
Executive Director.

[FR Doc. 2024-15195 Filed 7-5-24; 4:15 pm]

BILLING CODE 6820-31-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-24-0015; NARA-2024-044]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on [regulations.gov](https://www.regulations.gov) for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by August 26, 2024.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: <https://www.regulations.gov/docket/NARA-24-0015/document>. This is a direct link to the schedules posted in the docket for this notice on [regulations.gov](https://www.regulations.gov). You may

submit comments by the following method:

• **Federal eRulemaking Portal:** <https://www.regulations.gov>. On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on [regulations.gov](https://www.regulations.gov) and on submitting comments, see their FAQs at <https://www.regulations.gov/faq>.

If you are unable to comment via [regulations.gov](https://www.regulations.gov), you may email us at request.schedule@nara.gov for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Eddie Germino, Strategy and Performance Division, by email at regulation_comments@nara.gov or at 301-837-3758. For information about records schedules, contact Records Management Operations by email at request.schedule@nara.gov or by phone at 301-837-1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the [regulations.gov](https://www.regulations.gov) docket for this notice as "other" documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket

unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the [regulations.gov](https://www.regulations.gov) portal, you may contact request.schedule@nara.gov for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on [regulations.gov](https://www.regulations.gov) a "Consolidated Reply" summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at [regulations.gov](https://www.regulations.gov) to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at <https://www.archives.gov/records-mgmt/rcs>, after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or

program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of the Army, Agency-wide, Centralized Aviation Flight Records System (CAFRS) (DAA-AU-2023-0001).

2. Department of Defense, National Security Agency, Information Assurance (Cybersecurity Mission) Records (DAA-0457-2024-0002).

3. Department of State, Foreign Service Institute, Records of the Foreign Service Institute (DAA-0059-2020-0010).

4. Department of the Treasury, Bureau of the Fiscal Service, Records of Government Securities Regulations Staff (DAA-0425-2024-0002).

5. American Battle Monuments Commission, Agency-wide, Cemetery Operations and Support Services Records (DAA-0117-2023-0004).

6. National Aeronautics and Space Administration, Agency-wide, Aircraft Operations Records (DAA-0255-2024-0004).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2024-15010 Filed 7-8-24; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Subject 60-Day Notice for the "Arts Basic Survey"; Proposed Collection; Comment Request

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal

agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection on arts participation in the U.S. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below within 60 days from the date of this publication in the **Federal Register**.

ADDRESSES: Send comments to Sunil Iyengar, National Endowment for the Arts, via email (research@arts.gov).

SUPPLEMENTARY INFORMATION: The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Dated: July 3, 2024.

RaShaunda Thomas,

Administrative Officer (Deputy), Office of Administrative Services & Contracts, National Endowment for the Arts.

[FR Doc. 2024-14996 Filed 7-8-24; 8:45 am]

BILLING CODE 7537-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of National Council on the Humanities

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the National Council on the Humanities will meet to advise the Chair of the National Endowment for the Humanities (NEH) with respect to policies, programs and procedures for carrying out her functions; to review applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965 and make recommendations thereon to the Chair; and to consider gifts offered to NEH and make recommendations thereon to the Chair.

DATES: The meeting will be held on Thursday, July 18, 2024, from 10:30 a.m. until adjourned, and Friday, July 19, 2024, from 9:30 a.m. until adjourned.

ADDRESSES: The meeting will be held at the Constitution Center, 400 7th Street SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, 4th Floor, Washington, DC 20506; (202) 606-8322; evoyatzis@neh.gov.

SUPPLEMENTARY INFORMATION: The National Council on the Humanities is meeting pursuant to the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951-960, as amended).

The Committee meetings of the National Council on the Humanities will convene on July 18, 2024, from 10:30 a.m. until 12:30 p.m. (closed to the public), to discuss specific grant applications and programs before the Council. The following Committees will meet in the NEH offices at the Constitution Center: Digital Humanities; Education Programs; Federal/State Partnership; Preservation and Access; Public Programs; and Research Programs.

The National Council will then convene in executive session on July 18, 2024, from 1:30 p.m. until adjourned (closed to the public). The executive session will be held in the NEH offices at the Constitution Center.

The plenary session of the National Council on the Humanities will convene on July 19, 2024, at 9:30 a.m. until

adjourned in the Conference Center at the Constitution Center. The agenda for the morning session (open to the public) will be as follows:

- A. Minutes of Previous Meeting
- B. Reports
 - 1. Chair's Remarks
 - 2. Presentations by the U.S. Office of Science and Technology Policy, and the Executive Director of Florida Humanities

The remainder of the plenary session will be for consideration of specific applications before the Council. The agenda for the afternoon session (closed to the public) will be as follows:

- A. Reports
 - 1. Actions on Requests for Chair's Grants and Supplemental Funding
 - 2. Actions on Previously Considered Applications
- B. Digital Humanities
- C. Education Programs
- D. Federal/State Partnership
- E. Preservation and Access
- F. Public Programs
- G. Research Programs

As identified above, portions of the meeting of the National Council on the Humanities will be closed to the public pursuant to sections 552b(c)(4), 552b(c)(6), and 552b(c)(9)(B) of Title 5 U.S.C., as amended, because it will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, and discussion of certain information, the premature disclosure of which could significantly frustrate implementation of proposed agency action. I have made this determination pursuant to the authority granted me by the Chair's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Please note that individuals planning to attend the public session of the meeting are subject to security screening procedures. If you wish to attend the public session, please inform NEH as soon as possible by contacting gencounsel@neh.gov; or (202) 606-8322. Please provide advance notice of any special needs or accommodations, including for a sign language interpreter.

Dated: July 3, 2024.

Jessica Graves,
Paralegal Specialist, National Endowment for the Humanities.

[FR Doc. 2024-15013 Filed 7-8-24; 8:45 am]

BILLING CODE 7536-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-255; NRC-2024-0123]

Holtec Palisades, LLC; Holtec Decommissioning International, LLC; Palisades Nuclear Plant; Petition

AGENCY: Nuclear Regulatory Commission.

ACTION: 10 CFR 2.206 request; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is giving notice that by petition dated December 5, 2023, Beyond Nuclear, Michigan State Energy Future, and Don't Waste Michigan (the petitioners) filed a petition to intervene and a request for hearing on a proceeding to exempt the Palisades Nuclear Power Plant (Palisades) from certain requirements in NRC regulations. In denying the request for hearing, the Commission referred Contention 2 of the request, regarding the misuse of decommissioning funds, to the enforcement petition process under NRC regulations. The petitioner's requests are included in the **SUPPLEMENTARY INFORMATION** section of this document.

DATES: July 9, 2024.

ADDRESSES: Please refer to Docket ID NRC-2024-0123 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2024-0123. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC's PDR:* The PDR, where you may examine and order copies of

publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

James S. Kim, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-4125; email: James.Kim@nrc.gov.

SUPPLEMENTARY INFORMATION: On

September 28, 2023, Holtec Decommissioning International, LLC (Holtec), on behalf of Holtec Palisades, LLC, submitted a request (ADAMS Accession No. ML23271A140) to exempt the Palisades Nuclear Power Plant (Palisades) from certain requirements in section 50.82 of title 10 of the *Code of Federal Regulations* (10 CFR), "Termination of license." On December 5, 2023, the petitioners filed a petition to intervene and a request for hearing on this exemption proceeding (ADAMS Accession No. ML23339A192). In denying the request for hearing (ADAMS Accession No. ML23352A325), the Commission referred Contention 2 of the request, regarding the misuse of decommissioning funds, to the enforcement petition process under 10 CFR 2.206, "Requests for action under this subpart."

The underlying concern in Contention 2 of the December 5, 2023, request is that "Holtec misused the decommissioning trust fund (DTF) to keep Palisades in a status to restart the reactor, rather than to decommission the plant." The petitioners cited 10 CFR 50.82(a)(8) regarding appropriate uses of the DTF. Specifically, the petition to intervene asserted that:

1. Holtec expended \$44 million from the Palisades DTF from June 28 to December 31, 2022 (ADAMS Accession No. ML23090A140).

2. Holtec continued improper utilization of Palisades DTF from December 31, 2022, to present.

The NRC staff assembled a Petition Review Board (PRB) in accordance with NRC Management Directive (MD) 8.11, "Review Process for 10 CFR 2.206 Petitions," and its associated Directive Handbook 8.11, Section III (ADAMS Accession No. ML18296A043). On February 29, 2024 (ADAMS Accession No. ML24061A014), the petition manager informed the petitioners that the PRB's initial assessment was to not accept the petition for review. The PRB's position was that the petition did not meet the MD 8.11 criteria for

accepting petitions under 10 CFR 2.206 because the issues raised regarding Holtec's use of the Palisades DTF in 2022 had already been addressed through the NRC's inspection and enforcement process.

In August and November 2023 (ADAMS Accession No. ML23276B452 and ADAMS Accession No. ML24045A147, respectively), the NRC completed inspections that addressed, in part, the use of the Palisades DTF. As a result of these inspections, the NRC identified several instances, totaling just over \$57,000, in which the licensee used the Palisades DTF to pay for activities not considered legitimate decommissioning expenses per the definition in 10 CFR 50.2, "Definitions."

The NRC confirmed that the unauthorized reimbursements from the Palisades DTF were the result of inadvertent oversights and/or inattention to detail in the coding associated with the billing for various projects and community donations. The licensee has implemented several process revisions to address order coding modification issues/errors, as well as training to eliminate these issues from future DTF expenditures. In February 2024, the NRC issued Holtec a Severity Level IV Non-Cited Violation to address the illegitimate use of decommissioning funds at Palisades (ADAMS Accession No. ML24045A147).

On February 29, 2024, along with the initial assessment, the petition manager offered the petitioners an opportunity to address the PRB in a public meeting. This meeting was held on April 10, 2024. The transcript of that meeting is publicly available in ADAMS under Accession No. ML24114A016 and is considered a supplement to the petition. During the April 10, 2024, meeting, the petitioners discussed DTF expenditures of \$120 million noted in the 2023 Decommissioning Funding Status Report for Palisades, which was submitted to the NRC on March 29, 2024 (ADAMS Accession No. ML24089A117). The petitioners also raised concerns about whether the \$120 million was properly used for decommissioning expenditures in accordance with the current NRC requirements and guidance.

Following the April 10, 2024, public meeting, the PRB met to consider what had been presented during the meeting. The PRB found that the issues regarding use of the Palisades DTF in 2022 have been addressed through the inspection and enforcement process, as previously mentioned in this notice. Therefore, the PRB is not accepting those issues into the 10 CFR 2.206 process. The concerns the petitioners raised at the public

meeting regarding the recently submitted 2023 expenditure report for Palisades involve new information that has not yet been fully considered by the NRC. Therefore, in accordance with MD 8.11, Section III.C, the PRB is accepting that portion of the petitioner's concern into the 10 CFR 2.206 process for further review. However, the PRB is holding the petition review in abeyance until the NRC's review of the 2023 expenditure report for Palisades is complete, as it is relevant to the decision on the 10 CFR 2.206 petition.

Dated: July 2, 2024.

For the Nuclear Regulatory Commission.

Michael King,

Deputy Office Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2024-14953 Filed 7-8-24; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2024-0119]

Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Monthly notice.

SUMMARY: Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person.

DATES: Comments must be filed by August 8, 2024. A request for a hearing or petitions for leave to intervene must be filed by September 9, 2024. This monthly notice includes all amendments issued, or proposed to be issued, from May 24, 2024, to June 20, 2024. The last monthly notice was published on June 11, 2024.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic

comment submission through the Federal rulemaking website.

- **Federal rulemaking website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2024-0119. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the "For Further Information Contact" section of this document.

- **Mail comments to:** Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Susan Lent, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-1365; email: Susan.Lent@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2024-0119, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2024-0119.
- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please

send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2024-0119, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown in this notice, the Commission finds that the licensees' analyses provided, consistent with section 50.91 of title 10 of the *Code of Federal Regulations* (10 CFR) "Notice for public comment; State consultation," are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received

within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final

determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053>) and on the NRC's public website at <https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate>.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the "Guidance for Electronic Submissions to the NRC" (ADAMS Accession No. ML13031A056) and on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>.

To comply with the procedural requirements of E-Filing, at least 10

days prior to the filing deadline, the participant should contact the Office of the Secretary by email at Hearing.Docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that

provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)-(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing docket where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the "Obtaining Information and Submitting Comments" section of this document.

LICENSE AMENDMENT REQUESTS

Constellation Energy Generation, LLC; Braidwood Station, Units 1 and 2; Will County, IL

Docket Nos.	50-456, 50-457.
Application date	June 4, 2024.
ADAMS Accession No.	ML24156A245.
Location in Application of NSHC.	Pages 15-17 of Attachment 1.
Brief Description of Amendments.	The proposed amendments would revise Technical Specification Surveillance Requirement 3.7.9.2 to allow an ultimate heat sink temperature of less than or equal to 102.8°F until September 30, 2024.
Proposed Determination	NSHC
Name of Attorney for Licensee, Mailing Address.	Jason Zorn, Associate General Counsel, Constellation Energy Generation, LLC, 4300 Winfield Road, Warrenville, IL 60555.
NRC Project Manager, Telephone Number.	Joel Wiebe, 301-415-6606.

Constellation Energy Generation, LLC; Braidwood Station, Units 1 and 2, Will County, IL; Byron Station, Unit Nos. 1 and 2, Ogle County, IL

Docket Nos.	50-454, 50-455, 50-456, 50-457.
Application date	May 24, 2024.
ADAMS Accession No.	ML24145A116.

LICENSE AMENDMENT REQUESTS—Continued

Location in Application of NSHC.	Pages 9 and 10 of Attachment 1.
Brief Description of Amendments.	The proposed amendments would remove extraneous detail related to the Best Estimate Analyzer for Core Operations Nuclear software and more closely align with the Standard Technical Specifications, NUREG-1431, Revision 5.
Proposed Determination	NSHC
Name of Attorney for Licensee, Mailing Address.	Jason Zorn, Associate General Counsel, Constellation Energy Generation, LLC., 4300 Winfield Road, Warrenville, IL 60555.
NRC Project Manager, Telephone Number.	Joel Wiebe, 301-415-6606.

Constellation Energy Generation, LLC; Braidwood Station, Units 1 and 2, Will County, IL; Byron Station, Unit Nos. 1 and 2, Ogle County, IL

Docket Nos.	50-454, 50-455, 50-456, 50-457.
Application date	April 25, 2024.
ADAMS Accession No.	ML24116A112.
Location in Application of NSHC.	Pages 26 and 27 of Attachment 1.
Brief Description of Amendments.	The proposed amendments would remove the core operating limits report analytical method 5.6.5.b.5 from the technical specifications.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Jason Zorn, Associate General Counsel, Constellation Energy Generation, LLC, 4300 Winfield Road, Warrenville, IL 60555.
NRC Project Manager, Telephone Number.	Joel Wiebe, 301-415-6606.

Constellation Energy Generation, LLC; Dresden Nuclear Power Station, Units 2 and 3; Grundy County, IL

Docket Nos.	50-237, 50-249.
Application date	May 8, 2024.
ADAMS Accession No.	ML24129A135.
Location in Application of NSHC.	Pages 7-9 of Attachment 1.
Brief Description of Amendments.	The proposed amendments request adoption of Technical Specification Task Force (TSTF) Travelers, TSTF-505, Revision 2, "Provide Risk-Informed Extended Completion Times—RITSTF [Risk Informed TSTF] Initiative 4b," and TSTF-591, "Revise Risk Informed Completion Time (RICT) Program."
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Jason Zorn, Associate General Counsel, Constellation Energy Generation, LLC, 4300 Winfield Road, Warrenville, IL 60555.
NRC Project Manager, Telephone Number.	Surinder Arora, 301-415-1421.

Entergy Louisiana, LLC, and Entergy Operations, Inc.; River Bend Station, Unit 1; West Feliciana Parish, LA; Entergy Operations, Inc., System Energy Resources, Inc., Cooperative Energy, A Mississippi Electric Cooperative, and Entergy Mississippi, LLC; Grand Gulf Nuclear Station, Unit 1; Claiborne County, MS; Entergy Operations, Inc.; Waterford Steam Electric Station, Unit 3; St. Charles Parish, LA

Docket Nos.	50-416, 50-382, 50-458.
Application date	May 7, 2024.
ADAMS Accession No.	ML24128A042.
Location in Application of NSHC.	Pages 20-21 of the Enclosure.
Brief Description of Amendments.	The proposed amendments would remove License Condition 2.F, which requires the Grand Gulf Nuclear Station, Unit 1, River Bend Station, Unit 1, and Waterford Steam Electric Station, Unit 3 sites to report certain violations of Renewed Facility Operating License Section 2.C within 24 hours to the NRC Operations Center via the emergency notification system with a written follow-up at a later date. The licensee stated that this change is consistent with the notice published in the FEDERAL REGISTER on November 4, 2005 (70 FR 67202), as part of the consolidated line-item improvement process.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Susan Raimo, Associate General Counsel—Nuclear, 101 Constitution Avenue NW, Washington, DC 20001.
NRC Project Manager, Telephone Number.	Mahesh Chawla, 301-415-8371.

Florida Power & Light Company, et al.; St. Lucie Plant, Unit No. 2; St. Lucie County, FL

Docket No.	50-389.
Application date	April 30, 2024.
ADAMS Accession No.	ML24122A689.
Location in Application of NSHC.	Pages 14 and 15 of Enclosure 1.

LICENSE AMENDMENT REQUESTS—Continued

Brief Description of Amendment.	The proposed amendment would revise St. Lucie Plant, Unit No. 2, Technical Specification (TS) 3.7.15, "Spent Fuel Pool Storage," and TS 4.3, "Fuel Storage," to support updated spent fuel pool and new fuel vault criticality analyses, which account for the impact of a proposed transition to 24-month fuel cycles on fresh and spent fuel storage.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Steven Hamrick, Senior Attorney 801 Pennsylvania Ave. NW, Suite 220 Washington, DC 20004.
NRC Project Manager, Telephone Number.	Natreon Jordan, 301-415-7410.

NextEra Energy Seabrook, LLC; Seabrook Station, Unit No. 1; Rockingham County, NH

Docket No.	50-443.
Application date	May 10, 2024.
ADAMS Accession No.	ML24131A152.
Location in Application of NSHC.	Pages 6-7 of the Enclosure.
Brief Description of Amendment.	The proposed amendment would revise the Seabrook Station, Unit No. 1 Technical Specification (TS) 3.8.1.1.a, "A.C. Sources—Operating," to provide a one-time allowance to change plant modes from Cold Shutdown (MODE 5) to Startup (MODE 2) while one independent circuit between the offsite transmission network and the onsite Class 1E Distribution System is out of service. NextEra is requesting an additional 384 hours to the TS 3.8.1.1.a 72-hour completion time for a total of 456 hours.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Steven Hamrick, Senior Attorney 801 Pennsylvania Ave. NW, Suite 220 Washington, DC 20004.
NRC Project Manager, Telephone Number.	V. Sreenivas, 301-415-2597.

Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 1; Rhea County, TN

Docket No.	50-390.
Application date	April 17, 2024.
ADAMS Accession No.	ML24108A015.
Location in Application of NSHC.	Pages E-9—E-11 of the Enclosure.
Brief Description of Amendment.	The proposed amendment would revise the expiration date of the Watts Bar Nuclear Plant, Unit 1, Facility Operating License No. NPF-90 to be 40 years from the date that the full-power operating license was issued, rather than the date that the low-power license was issued.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 6A West Tower, 400 West Summit Hill Drive, Knoxville, TN 37902.
NRC Project Manager, Telephone Number.	Kimberly Green, 301-415-1627.

Vistra Operations Company LLC; Beaver Valley Power Station, Units 1 and 2; Beaver County, PA

Docket Nos.	50-334, 50-412.
Application date	May 7, 2024.
ADAMS Accession No.	ML24129A016.
Location in Application of NSHC.	Pages 2-4 of Attachment 1.
Brief Description of Amendments.	The proposed amendments would adopt Technical Specification Task Force-569, "Revise Response Time Testing Definition," which is an approved change to the Improved Standard Technical Specifications, into the Beaver Valley Power Station, Units 1 and 2, Technical Specifications (TSs). The proposed amendments would revise the TS definitions for Engineered Safety Feature Response Time and Reactor Trip System Response Time.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Rick Giannantonio, General Counsel, Energy Harbor Nuclear Corp., 168 E. Market Street Akron, OH 44308-2014.
NRC Project Manager, Telephone Number.	V. Sreenivas, 301-415-2597.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards

and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, were published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances

provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The

safety evaluation will provide the ADAMS accession numbers for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the "Obtaining Information and Submitting Comments" section of this document.

LICENSE AMENDMENT ISSUANCE(S)

Arizona Public Service Company, et al.; Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Maricopa County, AZ

Docket Nos	50–528, 50–529, 50–530.
Amendment Date	June 14, 2024.
ADAMS Accession No	ML24129A206.
Amendment Nos	222 (Unit 1), 222 (Unit 2), and 222 (Unit 3).
Brief Description of Amendment(s)	The amendments revised the Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (Palo Verde) technical specifications (TSs) to adopt Technical Specification Task Force (TSTF) Traveler TSTF–266–A, Revision 3, "Eliminate the Remote Shutdown System Table of Instrumentation and Controls." Specifically, Arizona Public Service Company (the licensee) deleted TS table 3.3.11–1, "Remote Shutdown System Instrumentation and Controls," from Palo Verde TS 3.3.11, "Remote Shutdown System," and placed the content of TS table 3.3.11–1 into licensee-controlled documents.
Public Comments Received as to Proposed NSHC (Yes/No)	No.

Constellation Energy Generation, LLC; Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Calvert County, MD

Docket Nos	50–317, 50–318.
Amendment Date	May 31, 2024.
ADAMS Accession No	ML24121A180.
Amendment Nos	350 (Unit 1), 327 (Unit 2).
Brief Description of Amendments	The amendments revised technical specifications to adopt Technical Specifications Task Force (TSTF) Traveler TSTF 59–A, Revision 1, "Incorporate CE [Combustion Engineering] NPSD–994 Recommendations into the SIT [Safety Injection Tanks] Specification," with plant-specific variations.
Public Comments Received as to Proposed NSHC (Yes/No)	No.

Constellation Energy Generation, LLC; Peach Bottom Atomic Power Station, Unit 1; York County, PA

Docket Nos	50–171.
Amendment Date	June 11, 2024.
ADAMS Accession No	ML24082A241.
Amendment Nos	18.
Brief Description of Amendments	The amendment modified License Condition 2.C(1) and Technical Specification Sections 1.0, 2.1(b)1, 2.1(b)6, 2.3(b)1, and 2.3(b)2 to remove restrictions that currently limit decommissioning activities/efforts.
Public Comments Received as to Proposed NSHC (Yes/No)	No.

Dominion Energy Nuclear Connecticut, Inc.; Millstone Power Station, Unit No. 3; New London County, CT

Docket No	50–423.
Amendment Date	June 4, 2024.
ADAMS Accession No	ML24128A277.
Amendment No	290.
Brief Description of Amendment	The amendment revised the Millstone Power Station, Unit No. 3, technical specifications (TSs) to update the reactor core safety limits (TS 2.1.1.2), fuel assembly design features (TS 5.3.1), and the list of approved methodologies for the Core Operating Limits Report (TS 6.9.1.6.b) to support the use of Framatome GAIA fuel with M5™ fuel cladding material, which is currently scheduled for insertion into the Millstone Power Station, Unit No. 3, reactor during the spring 2025 refueling outage.
Public Comments Received as to Proposed NSHC (Yes/No)	No.

Duke Energy Progress, LLC; H. B. Robinson Steam Electric Plant, Unit No. 2; Darlington County, SC

Docket No	50–261.

LICENSE AMENDMENT ISSUANCE(S)—Continued

Amendment Date	June 3, 2024.
ADAMS Accession No	ML24114A015.
Amendment No	279.
Brief Description of Amendment	The amendment eliminated the dynamic effects of postulated pipe ruptures to auxiliary piping systems attached to the reactor coolant system from the H. B. Robinson Steam Electric Plant, Unit No. 2 design and licensing basis using leak-before-break methodology.
Public Comments Received as to Proposed NSHC (Yes/No)	No.

Duke Energy Progress, LLC; H. B. Robinson Steam Electric Plant, Unit No. 2; Darlington County, SC

Docket No	50–261.
Amendment Date	October 12, 2023.
ADAMS Accession No	ML23226A086.
Amendment No	277.
Brief Description of Amendment	The amendment added a Feedwater Isolation on High-High Steam Generator Level function to Table 3.3.2–1 of Technical Specification (TS) 3.3.2, “Engineered Safety Feature Actuation System (ESFAS) Instrumentation,” and removed obsolete content from TSs 2.1.1.1, “Reactor Core SLs [Safety Limits],” and 5.6.5.b, “Core Operating Limits Report (COLR).”
Public Comments Received as to Proposed NSHC (Yes/No)	No.

Energy Northwest; Columbia Generating Station; Benton County, WA

Docket No	50–397.
Amendment Date	June 12, 2024.
ADAMS Accession No	ML24099A223.
Amendment No	275.
Brief Description of Amendment	The amendment modified Columbia Generating Station Technical Specification 3.6.2.3, “Residual Heat Removal (RHR) Suppression Pool Cooling,” to allow two RHR suppression pool cooling subsystems to be inoperable for 8 hours. The amendment is consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–230–A, Revision 1, “Add New Condition B to LCO [Limiting Condition for Operation] 3.6.2.3, ‘RHR Suppression Pool Cooling.’”
Public Comments Received as to Proposed NSHC (Yes/No)	No.

Energy Northwest; Columbia Generating Station; Benton County, WA

Docket No	50–397.
Amendment Date	May 31, 2024.
ADAMS Accession No	ML24128A224.
Amendment No	274.
Brief Description of Amendment	The amendment revised Columbia Generating Station Technical Specification 3.3.6.1, “Primary Containment Isolation Instrumentation,” to remove the requirement that the reactor water cleanup (RWCU) system automatically isolate on manual initiation of the standby liquid control (SLC) system. The SLC system is manually actuated in response to an anticipated transient without scram event. The amendment is based on NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–584, “Eliminate Automatic RWCU System Isolation on SLC Initiation.”
Public Comments Received as to Proposed NSHC (Yes/No)	No.

Pacific Gas and Electric Company; Diablo Canyon Nuclear Power Plant, Units 1 and 2; San Luis Obispo County, CA

Docket Nos	50–275, 50–323.
Amendment Date	May 29, 2024.
ADAMS Accession No	ML24099A219.
Amendment Nos	245 (Unit 1) and 247 (Unit 2).
Brief Description of Amendments	The amendments revised technical specifications to adopt Technical Specifications Task Force (TSTF) Traveler TSTF–505, Revision 2, “Provide Risk-Informed Extended Completion Times—RITSTF [Risk-Informed TSTF] Initiative 4b.” The changes would prevent unnecessary unit shutdowns for low-risk scenarios.
Public Comments Received as to Proposed NSHC (Yes/No)	No.

PSEG Nuclear LLC; Salem Nuclear Generating Station, Unit Nos. 1 and 2; Salem County, NJ

Docket Nos	50–272, 50–311.
Amendment Date	May 29, 2024.
ADAMS Accession No	ML24099A157.
Amendment Nos	348 (Unit 1), 330 (Unit 2).

LICENSE AMENDMENT ISSUANCE(S)—Continued

Brief Description of Amendments	The amendments revised the Salem Nuclear Generating Station, Unit Nos. 1 and 2, Technical Specification 6.8.4.f, "Primary Containment Leakage Rate Testing Program," by replacing the reference to Regulatory Guide 1.163 with a reference to Nuclear Energy Institute (NEI) Report NEI 94-01, Revision 3-A and the conditions and limitations specified in NEI 94-01, Revision 2-A.
Public Comments Received as to Proposed NSHC (Yes/No)	No.
Susquehanna Nuclear, LLC and Allegheny Electric Cooperative, Inc.; Susquehanna Steam Electric Station, Units 1 and 2; Luzerne County, PA	
Docket Nos	50-387, 50-388.
Amendment Date	May 29, 2024.
ADAMS Accession No	ML24127A226.
Amendment Nos	288 (Unit 1), 272 (Unit 2).
Brief Description of Amendments	The amendments revised technical specifications to adopt Technical Specifications Task Force (TSTF) Traveler TSTF-563, "Revise Instrument Testing Deficiencies to Incorporate the Surveillance Frequency Control Program," with plant specific variations.
Public Comments Received as to Proposed NSHC (Yes/No)	No.
Vistra Operations Company LLC; Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2; Somervell County, TX	
Docket Nos	50-445, 50-446.
Amendment Date	June 10, 2024.
ADAMS Accession No	ML24120A363.
Amendment Nos	187 (Unit 1) and 187 (Unit 2).
Brief Description of Amendments	The amendments revised the Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2, Facility Operating License Nos. NPF-87 and NPF-89, respectively, to add a new license condition to allow for the implementation of 10 CFR 50.69, "Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors."
Public Comments Received as to Proposed NSHC (Yes/No)	No.
Vistra Operations Company LLC; Perry Nuclear Power Plant, Unit 1; Lake County, OH	
Docket No	50-440.
Amendment Date	May 28, 2024.
ADAMS Accession No	ML24124A016.
Amendment No	204.
Brief Description of Amendment	The amendment revised the technical specifications in accordance with Technical Specifications Task Force (TSTF) Traveler TSTF-264, Revision 0, "3.3.9 and 3.3.10—Delete Flux Monitors Specific Overlap Requirement SRs [Surveillance Requirements]." Specifically, the proposed changes delete SRs 3.3.1.1.6 and 3.3.1.1.7 which verify the overlap between the source range monitor and the intermediate range monitor, and between the intermediate range monitor and the average power range monitor.
Public Comments Received as to Proposed NSHC (Yes/No)	No.

Dated: June 26, 2024.

For the Nuclear Regulatory Commission.

Aida Rivera-Varona,

*Deputy Director, Division of Operating
Reactor Licensing, Office of Nuclear Reactor
Regulation.*

[FR Doc. 2024-14417 Filed 7-8-24; 8:45 am]

BILLING CODE 7590-01-P

**NUCLEAR REGULATORY
COMMISSION**

[Docket No. 50-461; NRC-2024-0122]

**Constellation Energy Generation, LLC;
Clinton Power Station, Unit 1; Partial
Site Release**

AGENCY: Nuclear Regulatory
Commission.

ACTION: Public meeting; request for
comment.

SUMMARY: The U.S. Nuclear Regulatory
Commission (NRC) is considering a
request from Constellation Energy
Generation, LLC (Constellation, the
licensee) to approve the release of 172.7
acres of land to DeWitt County, Illinois,

for the Clinton Lake Marina.

Constellation had recently identified
that a Quit Claim Deed was executed by
AmerGen Energy Company, LLC, a
previous licensee for Clinton Power
Station, Unit 1, (CPS) on September 17,
2003, without obtaining approval in
accordance with NRC regulations.
Constellation states that this property
has not been impacted by CPS
operations. The NRC will review the
request as directed by NRC regulations.
The NRC is soliciting public comment
on the requested action and invites
stakeholders and interested persons to
participate.

DATES: The public meeting will be held
on Wednesday, July 24, 2024, from 5:30
p.m. until 7 p.m. central time (CT), at

the Clinton City Hall, 118 W Washington St., Ste. 3, Clinton, IL 61727. See Section III “Request for Comment and Public Meeting” of this document for additional information. Submit comments by July 24, 2024. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website.

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2024–0122. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the “For Further Information Contact” section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Joel S. Wiebe, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6606; email: Joel.Wiebe@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2024–0122 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2024–0122.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR)

reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC’s PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2024–0122 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

Constellation Energy Generation LLC (Constellation, the licensee) is the holder of Facility Operating License No. NPF–62 for Clinton Power Station, Unit 1 (CPS). The license provides, among other things, that the CPS, Unit 1 is subject to all rules, regulations, and orders of the NRC now or hereafter in effect. The CPS license (NPF–62, Docket No. 50–461) is for a power reactor under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), “Domestic Licensing of Production and Utilization Facilities.”

The NRC received a request for approval of a partial site release from Constellation, by letter dated June 7, 2023 (ADAMS Accession No.

ML23158A262), as supplemented by letter dated February 8, 2024 (ADAMS Accession No. ML24039A182). Constellation requests NRC approval to remove and release from its 10 CFR part 50, license, 172.7 acres of land for the Clinton Lake Marina in accordance with 10 CFR 50.83(b). In its request, the licensee states that the property that is subject to this release request was not used for plant operations or storage of radioactive material. As described in 10 CFR 50.83(c), the NRC will determine whether the licensee has adequately evaluated the effect of releasing the properties per the requirements of 10 CFR 50.83(a)(1); determine whether the licensee’s classification of any released areas as “non-impacted” is adequately justified; and if the NRC determines that the licensee’s submittal is adequate, the NRC will inform the licensee in writing that the release is approved.

III. Request for Comment and Public Meeting

The NRC will conduct a public meeting to answer questions and gather comments regarding Constellation’s request for approval of the partial site release. The meeting will be held on Wednesday, July 24, 2024, from 5:30 p.m. until 7 p.m., CT, at the Clinton City Hall, 118 W Washington St., Ste. 3, Clinton, IL 61727. Comments can be provided orally or in writing to the NRC staff present at the meeting. The NRC will consider and, if appropriate, respond to these written and verbal comments, but such comments will not otherwise constitute part of the decisional record.

Please contact Joel S. Wiebe no later than July 17, 2024, by phone at 301–415–6606 or by email at Joel.Wiebe@nrc.gov, if accommodations or special equipment are needed for you to attend or to provide comments, so that the NRC staff can determine whether the request can be accommodated.

For information regarding the meeting, monitor the NRC’s Public Meeting Schedule website at <https://www.nrc.gov/pmns/mtg> for information about the public meeting. The agenda will be posted no later than 10 days prior to the meeting.

Dated: July 3, 2024.

For the Nuclear Regulatory Commission.

Joel S. Wiebe,

Senior Project Manager, Licensing Projects Branch III, Division of Operating Reactors, Office of Nuclear Reactor Regulation.

[FR Doc. 2024–15015 Filed 7–8–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100460; File No. SR–NYSE–2024–35]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Section 302.00 of the NYSE Listed Company Manual To Exempt Closed-End Funds Registered Under the Investment Company Act of 1940 From the Requirement To Hold Annual Shareholder Meetings

July 3, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder, ² notice is hereby given that on June 21, 2024, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 302.00 of the NYSE Listed Company Manual (“Manual”) to exempt closed-end funds registered under the 1940 Act from the requirement to hold annual shareholder meetings. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Closed-end funds (“CEFs”) are a category of investment companies that are registered under the Investment Company Act of 1940 (“1940 Act”) ³ and listed by the NYSE under Section 102.04A of the Manual. Section 302.00 of the Manual provides that companies listing common stock or voting preferred stock and their equivalents are required to hold an annual shareholders’ meeting for the holders of such securities during each fiscal year. ⁴ CEFs are presently required to comply with the annual shareholder meeting requirement. The Exchange now proposes to amend Section 302.00 of the Manual to include CEFs among the categories of issuers that are exempt from this requirement.

The Exchange notes that, in addition to the listing under Section 102.04A of the Manual of CEFs registered under the 1940 Act, the Exchange also lists under Section 102.04B of the Manual business development companies (“BDCs”). A BDC is a closed-end management investment company that is registered under the Exchange Act and that has filed an election to be treated as a business development company under the 1940 Act. The Exchange does not at this time propose to provide an exemption from the annual meeting requirement of Section 302.00 to BDCs.

The Exchange notes that there are significant differences between CEFs and listed operating companies that justify exempting CEFs from the Exchange’s annual meeting requirement. In particular, the Exchange notes that the 1940 Act includes specific requirements with respect to the

election of directors by CEF shareholders, while there is no such requirement under federal law for listed operating companies. Specifically, Section 16(a) of the 1940 Act ⁵ specifies the right of CEF shareholders to elect directors as follows:

No person shall serve as a director of a registered investment company unless elected to that office by the holders of the outstanding voting securities of such company, at an annual or a special meeting duly called for that purpose; except that vacancies occurring between such meetings may be filled in any otherwise legal manner if immediately after filling any such vacancy at least two-thirds of the directors then holding office shall have been elected to such office by the holders of the outstanding voting securities of the company at such an annual or special meeting. In the event that at any time less than a majority of the directors of such company holding office at that time were so elected by the holders of the outstanding voting securities, the board of directors or proper officer of such company shall forthwith cause to be held as promptly as possible and in any event within sixty days a meeting of such holders for the purpose of electing directors to fill any existing vacancies in the board of directors unless the Commission shall by order extend such period. The foregoing provisions of this subsection shall not apply to members of an advisory board.

The Exchange also notes that the 1940 Act requires that directors who are not “interested persons” ⁶ (“1940 Act Interested Persons”) must comprise at least 40% of an investment company’s board. ⁷ In the Exchange’s experience, a large majority of listed CEFs exceed this requirement by having boards on which more than 50% of members are not 1940 Act Interested Persons.

In addition to the director election provisions described above, the 1940 Act requires that a majority of directors who are not 1940 Act Interested Persons approve significant actions, such as approval of the investment advisory agreement between a CEF and its investment advisor. ⁸ Specifically, the following types of actions require approval of a majority of a CEF’s directors who are not 1940 Act Interested Persons: approval of advisory agreements; ⁹ approval of underwriting

³ 15 U.S.C. 80a–1 *et seq.*

⁴ Section 302.00 of the Manual exempts from this requirement companies whose only securities listed on the Exchange are non-voting preferred and debt securities, passive business organizations (such as royalty trusts), or securities listed pursuant to Rule 5.2(j)(2) (Equity Linked Notes), Rule 5.2(j)(3) (Investment Company Units), Rule 5.2(j)(4) (Index-Linked Exchangeable Notes), Rule 5.2(j)(5) (Equity Gold Shares), Rule 5.2(j)(6) (Equity-Index Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities), Rule 5.2(j)(8) (Exchange-Traded Fund Shares), Rule 8.100 (Portfolio Depositary Receipts), Rule 8.200 (Trust Issued Receipts), Rule 8.201 (Commodity-Based Trust Shares), Rule 8.202 (Currency Trust Shares), Rule 8.203 (Commodity Index Trust Shares), Rule 8.204 (Commodity Futures Trust Shares), Rule 8.300 (Partnership Units), Rule 8.400 (Paired Trust Shares), Rule 8.600 (Managed Fund Shares), Rule 8.601 (Active Proxy Portfolio Shares), Rule 8.700 (Managed Trust Securities), and 8.900 (Managed Portfolio Shares).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

⁵ 15 U.S.C. 80a–16(a).

⁶ The term “interested person” is defined in Section 2(a)(19) of the 1940 Act.

⁷ 15 U.S.C. 80a–2(a)(19).

⁸ See Section 15 of the 1940 Act. 15 U.S.C. 80a–15.

⁹ *Ibid.*

agreements;¹⁰ selection of independent public accountant;¹¹ acquisition of securities by a CEF from an underwriting syndicate of which the CEF's advisor or certain other affiliates are members;¹² the purchase or sale of securities between CEFs that have the same investment advisor;¹³ mergers or asset acquisitions involving CEFs that have the same investment advisor;¹⁴ use of an affiliate broker-dealer to effect portfolio transactions on a national securities exchange;¹⁵ and approval of the CEF's fidelity bond coverage.¹⁶

There are also a number of material matters with respect to which the 1940 Act requires registered investment companies, including CEFs, to obtain shareholder approval. These matters include: a new investment management agreement or a material amendment to an investment management agreement;¹⁷ a change from closed-end to open-end status or vice versa;¹⁸ a change from diversified company to non-diversified company;¹⁹ a change in a policy with respect to borrowing money, issuing senior securities; underwriting securities that other persons issue, purchasing or selling real estate or commodities or making loans to other persons, except in each case in accordance with the recitals of policy contained in its registration statement in respect thereto;²⁰ a deviation from a policy in respect of concentration of investments in any particular industry or fundamental investment policy;²¹ and a change in the nature of the investment company's business so as to cease to be an investment company.²²

In light of the above-described significant statutory protections under the 1940 Act provided to the shareholders of CEFs, for which there are no parallel legal protections for the shareholders of public operating companies, the Exchange believes that it is appropriate to exempt CEFs from the annual shareholder meeting requirements of Section 302.00 of the Manual. The Exchange notes that all of the categories of investment companies for which the Exchange has listing standards other than CEFs are already

explicitly exempt from the annual shareholder meeting requirement of Section 302.00 of the Manual.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁴ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed exemption of CEFs from the annual shareholder meeting requirement of Section 302.00 of the Manual is consistent with the protection of investors and the public interest because of the provisions in the 1940 Act providing significant protection of CEF shareholders, including by requiring: (i) the election of directors by the CEF's shareholders when the number of 1940 Act Interested Persons on the board exceed specified levels; (ii) the approval of certain specified material matters by a majority of the directors who are not 1940 Act Interested Persons; and (ii) the approval of certain specified material matters by the shareholders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposal will not impose a burden on either intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to permit CEFs to rely on the shareholder voting requirements under the 1940 Act rather than complying with the annual meeting requirement of Section 302.00 of the Manual. As all CEFs listed on the NYSE would be treated the same under

the proposed amended rule, the Exchange does not believe that the proposal would impose any burden on intramarket competition. Any other market that lists CEFs could seek to amend its own annual meeting requirements applicable to CEFs and, as such, the Exchange does not believe that the proposal places any undue burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NYSE-2024-35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the

¹⁰ *Ibid.*

¹¹ See Section 32 of the 1940 Act. 15 U.S.C. 80a-32.

¹² See 1940 Act Rule 10f-3(h).

¹³ See 1940 Act Rule 17a-7(e).

¹⁴ See 1940 Act Rule 17a-8(e).

¹⁵ See 1940 Act Rule 17e-1(b).

¹⁶ See 1940 Act Rule 17g-1(d).

¹⁷ See U.S.C. 80a-15.

¹⁸ See U.S.C. 80a-13.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-35 and should be submitted on or before July 30, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-15037 Filed 7-8-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100456; File No. SR-NYSEARCA-2024-57]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule

July 2, 2024.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act") ² and Rule 19b-4 thereunder, ³ notice is hereby given that, on June 17, 2024, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule ("Fee Schedule") to modify the Customer Take Fee Discount Tiers. The Exchange proposes to implement the fee change effective June 17, 2024.⁴ The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to modify the Customer Take Fee Discount Tiers. The Exchange proposes to implement the rule change on June 17, 2024.

Background

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current

regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."⁵

There are currently 17 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.⁶ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in April of 2024, the Exchange had 13.71% market share of executed volume of multiply-listed equity & ETF options trades.⁷ Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees (and credits), and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers specific rates and credits in its Fees Schedule, as do other competing options exchanges, which the Exchange believes provide incentive to OTP Holder and OTP Firms (collectively, "OTP Holders") to increase order flow of certain qualifying orders.

Proposal

In response to these competitive forces, the Exchange has established various pricing incentives designed to encourage increased volume executed on the Exchange, including volume that

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) ("Reg NMS Adopting Release").

⁶ The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

⁷ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.*, the Exchanges market share in equity-based options increased from 12.54% for the month of April 2023 to 13.71% for the month of April 2024.

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ On June 3, 2024, the Exchange originally filed to amend the Fee Schedule (NYSEARCA-2024-51) and, on June 14, 2024, the Exchange withdrew that filing and submitted NYSEARCA-2024-56. On June 17, 2024, the Exchange withdrew NYSEARCA-2024-56.

removes or “takes” liquidity on the Exchange (also known as “liquidity taking” or “liquidity removing” volume). Currently, if an OTP Holder executes a “liquidity taking” transaction, the OTP Holder is charged a “Take Liquidity” fee (referred to herein as a “Take Fee”, or collectively, as “Take Fees”).⁸ Currently, Customer executions in Penny and non-Penny issues are subject to Take Fees of \$0.49 and \$0.85, respectively.⁹ To offset such Take Fees and encourage market participants to direct order flow to the

Exchange, the Exchange offers Take Fee discounts to some market participants for executions in Penny and non-Penny issues.¹⁰ Last year, in September 2023, the Exchange introduced the Customer Take Fee Discount Tiers (the “Take Fee Discount(s)”), which provides tiered per contract discounts on Customer Take Fees (in both Penny and non-Penny issues) based on an OTP Holder’s achievement of certain volume qualifications in average electronic executions per day.¹¹ Now that the Take Fee Discounts have been in place for

approximately nine months, the Exchange is proposing certain modifications.

Specifically, the Exchange proposes to modify the volume qualifications for Tiers 1 and 2 of the Take Fee Discounts (without changing the per contract discount) and to delete entirely the Tier 3 Take Fee Discount of the Program.

The proposed changes to the Take Fee Discounts are as follows (with new text shown in italics and to be deleted text shown in brackets):

Tier	Take fee discount qualification for Penny and Non-Penny Issues	Discount amount
Tier 1	At least [0.20%] <i>0.40%</i> of TCADV from Customer liquidity removing interest in all issues	\$0.01
Tier 2	At least [0.40%] <i>0.60%</i> of TCADV from Customer liquidity removing interest in all issues, and 1% of TCADV from Customer posted interest in all issues.	0.02
[Tier 3]	[At least 0.60% of TCADV from Customer liquidity removing interest in all issues, and 1.50% of TCADV from Customer posted interest in all issues].	[0.03]

Professional Customer orders are not included in the above qualifications or in discount-eligible volume. OTP Holders and OTP Firms may earn only the highest discount for which they qualify.

As proposed, Tier 1 would continue to offer a \$0.01 discount on Customer Take Fees if an OTP Holder achieves at least 0.40% of TCADV (up from 0.20%) in Customer liquidity removing interest in all issues and Tier 2 would continue to offer a \$0.02 discount on Customer Take Fees if an OTP Holder achieves at least 0.60% of TCADV (up from 0.40%) in Customer liquidity removing interest in all issues and 1% of TCADV from Customer posting in all issues, which 1% threshold is not being modified. Further, the Exchange is proposing to remove entirely Tier 3, which currently offers a \$0.03 discount on Customer Take Fees when an OTP Holder achieves at least 0.60% of TCADV from Customer liquidity removing interest in all issues and 1.50% of TCADV from Customer posting in all issues. The Exchange therefore believes that the proposed modifications to Tiers 1 and 2, coupled with the removal of Tier 3, would strike the right balance between setting the thresholds for the Take Fee Discounts at levels that are achievable, while ensuring that the overall Take Fee rates remain competitive with other options exchanges.¹²

As is the case today, the Take Fee Discounts only apply to Customer orders, and the qualifications for the discounts are based only on activity in the Customer range; activity in the

Professional Customer range is not included in the qualifications and is not eligible to receive any of the proposed discounts, as Professional Customer orders are already eligible for other discounts on Take Fees.¹³ Further, as is the case today, OTP Holders may earn only the highest discount for which they qualify.

Although the Exchange cannot predict with certainty whether any OTP Holders would seek to qualify for the Take Fee Discounts, the Exchange believes that the proposed change would continue to encourage OTP Holders to direct interest—particularly Customer liquidity removing interest—to the Exchange to earn the proposed discounts on Take Fees. To the extent that the proposed Program, as modified, continues to attract Customer order flow, including liquidity taking volume, the Exchange believes all market participants stand to benefit from increased order flow, which promotes market depth, facilitates tighter spreads and enhances price discovery. Such increased liquidity would result in enhanced market quality for all participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and

further the objectives of Sections 6(b)(4) and (5) of the Act,¹⁵ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change to the Take Fee Discounts is reasonable, equitable, and not unfairly discriminatory. As noted above, the Exchange operates in highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. As such, market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that the proposed fee change is reasonable, equitable, and not unfairly discriminatory in that the Exchange and competing options exchanges currently offer similar discounts.

The Exchange believes that the proposed Take Fee Discounts would continue to incent OTP Holders to increase the amount of Customer interest sent to the Exchange, especially liquidity removing interest, which

⁸ See Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, TRANSACTION FEE FOR ELECTRONIC EXECUTIONS—PER CONTRACT.

⁹ See *id.*

¹⁰ See, e.g., Fee Schedule, DISCOUNT IN TAKE LIQUIDITY FEES FOR PROFESSIONAL CUSTOMER AND NON-CUSTOMER LIQUIDITY REMOVING INTEREST.

¹¹ See Securities Exchange Act Release No. 98422 (September 18, 2023), 88 FR 65415 (September 22, 2023) (immediately effective fee filing to adopt the

Customer Take Fee Discount Tiers) (SR–NYSEARCA–2023–62).

¹² See notes 16–17, *infra*.

¹³ See note 10, *supra*.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

benefits all market participants by providing more trading opportunities, thereby making the Exchange a more attractive execution venue. The Exchange further believes that the proposed qualifications for the Take Fee Discounts are attainable for OTP Holders based on recent volumes and that the proposed amounts of the discounts are reasonable, as the Exchange's rates for Customer liquidity removing interest would remain in range of and competitive with the rates assessed by other options exchanges.¹⁶ In particular, the Exchange believes that the proposed modifications to Tiers 1 and 2, coupled with the removal of Tier 3, would strike the right balance between setting the thresholds for the Take Fee Discounts at levels that are achievable, while ensuring that the overall Take Fee rates remain competitive.

To the extent the proposed rule change attracts greater volume and liquidity by encouraging OTP Holders to increase their options volume on the Exchange, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors.¹⁷

The Proposed Rule Change is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of

business transacted on the Exchange, and OTP Holders can attempt to qualify for the discounts or not. Moreover, the proposal is designed to incent OTP Holders to continue to direct Customer liquidity removing interest to the Exchange and to aggregate all liquidity removing interest at the Exchange as a primary execution venue. To the extent that the proposed change attracts more opportunities for execution of Customer interest on the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Exchange also believes the proposed Take Fee Discounts are not unfairly discriminatory because they would be available to all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange also believes that the proposed change is not unfairly discriminatory to Professional Customers and non-Customers, as those market participants are already afforded discounts on Take Fees under the current Fee Schedule.¹⁸

The proposal is based on the amount and type of business transacted on the Exchange, and OTP Holders are not obligated to try to achieve the proposed qualifications to earn the Take Fee Discounts, nor are they obligated to direct liquidity removing interest or posted interest to the Exchange. To the extent that the proposed change attracts more interest, including liquidity removing interest, to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, in turn, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹⁹

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange, including both liquidity removing interest and posting interest. The Exchange believes that the proposed change would incent OTP Holders to continue to direct their liquidity removing order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased liquidity removing order flow would increase opportunities for execution of other trading interest. The proposed modifications would be available to all similarly-situated market participants and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed

¹⁶ See, e.g., Nasdaq Stock Market, Options 7, Pricing Schedule, available at: <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7> (providing for rates of \$0.49 for Customer liquidity removing interest in Penny issues and rate of \$0.85 for Customer liquidity removing interest in non-Penny issues); MEMX Options Fee Schedule, Transaction Fees, available here: <https://info.memxtrading.com/us-options-trading-resources/us-options-fee-schedule/> (providing for rates of \$0.46 for Customer liquidity removing interest in Penny issues and rate of \$0.85 for Customer liquidity removing interest in non-Penny issues); and Cboe BZX Options, Fee Schedule, Standard Rates, available at: https://www.cboe.com/us/options/membership/fee_schedule/bzx/ (providing for rates of \$0.45 for Customer liquidity removing interest in Penny issues and rate of \$0.85 for Customer liquidity removing interest in non-Penny issues). Currently, Customer executions in Penny and non-Penny issues are subject to per contract Take Fees of \$0.49 and \$0.85, respectively. As proposed, an OTP Holder that achieves Tier 1 or Tier 2 would pay \$0.48 or \$0.47, respectively, for Penny issues and \$0.84 or \$0.83, respectively, for non-Penny issues, which is comparable to rates available on other options exchanges.

¹⁷ See *id.*

¹⁸ See note 10, *supra*.

¹⁹ See Reg NMS Adopting Release, *supra* note 5, at 37499.

equity and ETF options trades.²⁰ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in April 2024, the Exchange had 13.71% market share of executed volume of multiply-listed equity and ETF options trades.²¹

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to incent OTP Holders to direct trading to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including options exchanges that offer comparable rates for Customer liquidity removing interest,²² by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) ²³ of the Act and subparagraph (f)(2) of Rule 19b-4 ²⁴ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ²⁵ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEARCA-2024-57. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or

withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2024-57 and should be submitted on or before July 30, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-14972 Filed 7-8-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100455; File No. SR-OCC-2024-006]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change by The Options Clearing Corporation Concerning Amendments to Its Rules and Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description

July 2, 2024.

I. Introduction

On May 2, 2024, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change (the "Proposed Rule Change") to amend its Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description ("Methodology Description") to incorporate additional stress scenarios into OCC's financial resource sufficiency monitoring and its Rules to clarify OCC's practice of collecting additional collateral from its members based on such monitoring. The Proposed Rule Change was published for comment in the **Federal Register** on May 21, 2024.³ The Commission has not received any comments on the Proposed Rule Change. For the reasons discussed below, the Commission is approving the Proposed Rule Change.

II. Description of the Proposed Rule Change

As a clearing agency, OCC faces a number of risks including credit and

²⁰ The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

²¹ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, see id., the Exchanges market share in equity-based options increased from 12.54% for the month of April 2023 to 13.71% for the month of April 2024.

²² See notes 16-17, *supra*.

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(2).

²⁵ 15 U.S.C. 78s(b)(2)(B).

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 100147 (May 15, 2024), 89 FR 44752 (May 21, 2024) (File No. SR-OCC-2024-006) ("Notice").

liquidity risk.⁴ OCC manages its credit and liquidity risk, in part, by performing daily stress testing⁵ that covers a wide range of scenarios.⁶

OCC groups its stress testing scenarios into different categories, including Sufficiency Scenarios and Informational Scenarios.⁷ Sufficiency Scenarios are designed to measure the potential exposures that a Clearing Member Group's portfolios present relative to OCC's credit and liquidity resources so that OCC can determine the potential need to call for additional collateral, either as margin or as Clearing Fund collateral, or adjust the forms of collateral on deposit.⁸ Specifically, depending on Sufficiency Scenario results, OCC Rules 609 or 1001 may allow or require OCC to call for additional margin or Clearing Fund resources from a Clearing Member.⁹ Moreover, under OCC Rules 601 and 609, OCC could require that a Clearing Member provide additional resources in the form of cash.¹⁰ In contrast, OCC uses Informational Scenarios to monitor and assess the size of OCC's prefunded financial resources against a wide range of stress scenarios for informational and risk monitoring purposes.¹¹ These scenarios are not used to determine the size of OCC's financial resources; however, OCC's Risk Committee may approve adjustments with respect to how OCC categorizes these scenarios.¹² For example, OCC's Risk Committee could approve the recategorization of an Informational Scenario as a Sufficiency Scenario.¹³

The Proposed Rule Change would make three groups of changes related to OCC's Sufficiency Scenarios. First, it

would recategorize two Informational Scenarios as Sufficiency Scenarios by making changes to the Methodology Description.¹⁴ As a result, the two recategorized scenarios would be used to determine potential calls for additional collateral. Second, the Proposed Rule Change would add detail to OCC's Rules outlining circumstances under which OCC could require Clearing Members to contribute additional collateral due to the results of Sufficiency Scenarios. Third, the Proposed Rule Change would make minor formatting and grammatical changes to the Methodology Description and the Rules.

A. Recategorization of Scenarios

OCC's Methodology Description lists a subset of the Sufficiency Scenarios that have been implemented in OCC's stress testing system. The Sufficiency Scenarios on this list are historical scenarios that replicate historical events under current market conditions. For example, among the listed Sufficiency Scenarios are scenarios that replicate the largest rally/decline in 2008.

To replicate historical events in its current Sufficiency Scenarios, OCC applies one of three price shocks to risk factors in a predetermined order, also referred to as a waterfall.¹⁵ As its first choice for a price shock, OCC uses the returns of the risk factor observed during the historical event. If such returns do not exist, or are otherwise unavailable, OCC uses the market return from the risk factor's corresponding sector as the price shock. If neither the risk factor return nor the market sector return is available, OCC uses a beta approach to set the price shock.¹⁶ Currently, OCC applies this waterfall to determine price shocks for the 2008 largest rally/decline Sufficiency Scenarios.

Some of OCC's Informational Scenarios use a different approach to

determine the price shock applied to risk factors than the existing Sufficiency Scenarios use, which yields different outcomes. For example, some existing Informational Scenarios are variations of the 2008 largest rally/decline Sufficiency Scenarios that directly apply the risk driver beta-derived price shock as the price shock instead of using the waterfall approach. As part of the regular review of the output of its stress scenarios, OCC found that the variations of the 2008 largest rally/decline Informational Scenarios described above yielded exposures that were consistently higher than those generated by the corresponding Sufficiency Scenarios.¹⁷ To enhance its ability to manage risks, OCC proposes recategorizing such variations of the 2008 largest rally/decline scenarios from Informational Scenarios to Sufficiency Scenarios by adding them to the Sufficiency Scenarios listed in OCC's Methodology Description.¹⁸ This would allow the newly-recategorized Sufficiency Scenarios to be used to drive the size of the Clearing Fund and calls for additional margin, which is not the case while they remain categorized as Informational Scenarios.¹⁹

B. Changes to the Rules Related to Intra-Day Margin and the Clearing Fund

OCC also proposes changes to its Rules to clarify OCC's practice of collecting additional collateral from its members based on stress scenario monitoring. Specifically, OCC proposes changes to Rule 609, which governs intra-day margin, and Rule 1001(c), which governs intra-month clearing fund sizing adjustments. OCC proposes these changes to align the Rules with OCC's current practices and procedures.²⁰

Some of the proposed changes to Rule 609 clarify OCC's approach to situations where a Clearing Member Group is subject to an intra-day margin call under more than one Sufficiency Stress Test. Rule 609(a)(5) currently provides that OCC may require the Clearing Member Group responsible for a stress test exposure to deposit intra-day margin if a Sufficiency Stress Test identifies an exposure that exceeds 75% of the current Clearing Fund requirement less deficits.²¹ In the event of such a margin call, OCC's current practice is to compare the margin call amount to existing intra-day margin call amounts for the monthly period under OCC Rules

⁴ Credit Risk is the risk that a counterparty will be unable to meet fully its financial obligations when due, or at any time in the future. Liquidity Risk is the risk that a counterparty will have insufficient funds to meet its financial obligations as and when expected, although it may be able to do so in the future. Bank for International Settlements & International Organization of Securities Commissions, *Principles for Financial Market Infrastructures*, <https://www.bis.org/cpmi/publ/d101a.pdf>.

⁵ Stress testing is the estimation of credit or liquidity exposures that would result from the realization of potential stress scenarios, such as extreme price changes, multiple defaults, or changes in other valuation inputs and assumptions. 17 CFR 240.17Ad-22(a).

⁶ Notice, 89 FR at 44753; see OCC Rule 609, OCC Rule 1001.

⁷ Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at <https://www.theocc.com/about/publications/bylaws.jsp>.

⁸ Notice, 89 FR at 44753.

⁹ *Id.*

¹⁰ *Id.* at 44754 n.20.

¹¹ *Id.* at 44753.

¹² *Id.*

¹³ *Id.*

¹⁴ The Methodology Description describes the Comprehensive Stress Testing and Clearing Fund Methodology, and Liquidity Risk Management Description that OCC uses to analyze the adequacy of its financial resources and to challenge its risk management framework. *Id.* at 44573 n.5.

¹⁵ Risk factors are products or attributes whose historical data are used to estimate and simulate the risk for an associated product. *Id.* at 44574 n.12.

¹⁶ Beta is the sensitivity of a security with respect to its corresponding risk driver. *Id.* at 44754 n.14. Examples of risk drivers include price and volatility with respect to equity securities. Different categories of products—for example, collateral positions in U.S. Government Securities versus Canadian Government Securities—have different risk drivers. *Id.* at 44754 n.15. The risk driver shock is the return of a risk driver from a historical event. *Id.* at 44754. The beta approach is the application of the shock of a risk driver to the beta of the related risk factor, which generates a “risk driver beta derived price shock.”

¹⁷ *Id.* at 44753.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 44754–55.

²¹ *Id.* at 44754; OCC Rule 609(a)(5).

609(a)(5). A new margin call is issued when the margin call amount is greater than existing intra-day margin call amounts under Rule 609(a)(5). The updated margin call amount would remain in effect until either the next monthly resizing of the Clearing Fund, or the amount is superseded by a larger margin call amount.²² To reflect this current practice,²³ and consistent with the Clearing Fund Methodology Policy,²⁴ OCC proposes adding language to Rule 609(a)(5) noting that if a Clearing Member Group is subject to intra-day margin calls under more than one Sufficiency Stress Test, the largest call will be applied and remain in effect until the next monthly resizing.²⁵

Separately, OCC proposes to conform Rule 609(a)(5) to OCC's existing policies.²⁶ As noted above, current Rule 609(a)(5) requires the Clearing Member Group responsible for a stress test exposure to deposit margin intra-day if a Sufficiency Stress Test identifies an exposure that exceeds 75% of the current Clearing Fund requirement less deficits. OCC's Clearing Fund Methodology Policy contains similar language with a notable difference. Specifically, the Clearing Fund Methodology Policy does not include the "less deficits" language, while such language is in OCC Rule 609(a)(5).²⁷ This language was removed from the Clearing Fund Methodology Policy in an effort to conform the Clearing Fund Methodology Policy to changes to OCC's Rules, shortening the number of days a Clearing Member has to meet funding obligations related to the Clearing Fund.²⁸ Given the previous change to its rules, OCC considers the "less deficits" language in each document unnecessary.²⁹ As such, OCC proposes removing the "less deficits" language from Rule 609(a)(5) to promote consistency within its rules.³⁰

OCC also proposes changes to Rule 1001(c) to reflect its current practices.³¹ Rule 1001(c) currently indicates that, if at any time between regular monthly calculations of the size of the Clearing Fund a Sufficiency Stress Test identifies a breach that exceeds 90% of the size of the Clearing Fund requirement (less any margin collected as a result of a Sufficiency Stress Test breach pursuant to Rule 609), the calculated size of the Clearing Fund shall be increased. As is reflected in OCC's Clearing Fund Methodology Policy, OCC's current practice is to include margin called, rather than only margin collected, in the amount subtracted in the calculation from Rule 1001(c).³² To align the descriptions in OCC's Rules with OCC's current practices, OCC proposes adding "or to be collected" to the text of Rule 1001(c).³³

C. Minor Formatting and Grammatical Changes

OCC also proposes several minor formatting and grammatical changes to its rules. In the Methodology Description, OCC proposes minor edits to correct the formatting of footnotes. Additionally, in the Rules, OCC proposes replacing the words "such that" with "from" and adding the word "that" to Rule 609(a)(5) so that it reads "stress test exposures from a Sufficiency Stress Test (as defined in Rule 1001(a)) that identifies an exposure" instead of "stress test exposures such that a Sufficiency Stress Test (as defined in Rule 1001(a)) identifies an exposure."

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.³⁴ Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change."³⁵ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to

support an affirmative Commission finding,³⁶ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.³⁷ Moreover, "unquestioning reliance" on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.³⁸

After carefully considering the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, for the reasons given below, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act³⁹ and Rule 17Ad-22(e)(4) thereunder.⁴⁰

A. Consistency With Section 17A(b)(3)(F) of the Act

Under Section 17A(b)(3)(F) of the Act, OCC's rules, among other things, must be "designed to promote the prompt and accurate clearance and settlement of securities transactions . . . derivative agreements, contracts, and transactions . . . and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible."⁴¹ Based on its review of the record, and for the reasons discussed below, OCC's changes are consistent with Section 17A(b)(3)(F) of the Act⁴² because they decrease the likelihood of loss mutualization, may increase, and cannot decrease, the amount of financial resources that OCC collects to address credit losses that could arise from the default of a Clearing Member, and support OCC's robust default management system.

OCC's proposal to elevate Informational Scenarios to Sufficiency Scenarios may decrease the likelihood of loss mutualization. As noted above, OCC proposes to expand the scope of stress scenarios against which OCC monitors its financial resources by elevating, from Informational Scenarios to Sufficiency Scenarios, variations on their 2008 largest rally/decline scenarios, which first apply the risk driver beta-derived price shock as the

²² Notice, 89 FR at 44754.

²³ *Id.*

²⁴ Securities Exchange Act Release No. 83406 (June 11, 2018), 83 FR 28018, 28025 (June 15, 2018) (File No. SR-OCC-2018-008).

²⁵ While a margin call imposed as the result of a Sufficiency Stress Test will remain in effect until the next monthly Clearing Fund resizing, the imposition of such a margin call would not preclude OCC from making additional margin calls driven by subsequent Sufficiency Stress Tests prior to the monthly resizing.

²⁶ Notice, 89 FR at 44755.

²⁷ *Id.*

²⁸ Securities Exchange Act Release No. 94950 (May 19, 2022), 87 FR 31916, 31918 (May 25, 2022) (File No. SR-OCC-2022-004). Prior to approval of SR-OCC-2022-004, Clearing Members had two days to deposit additional required Clearing Fund assets. In SR-OCC-2022-004, OCC proposed to shorten this period. *Id.*; Notice, 89 FR at 44755.

²⁹ Notice, 89 FR at 44755.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 44755 n.27.

³³ *Id.* at 44755.

³⁴ 15 U.S.C. 78s(b)(2)(C).

³⁵ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Susquehanna Int'l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017) ("Susquehanna").

³⁹ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁰ 17 CFR 240.17Ad-22(e)(4).

⁴¹ 15 U.S.C. 78q-1(b)(3)(F).

⁴² *Id.*

price shock as opposed to using the waterfall approach. Once these scenarios are elevated to Sufficiency Scenarios, they would be used to determine whether it is necessary to call for additional margin intra-day or an increase to the size of the Clearing Fund intra-month.⁴³ By elevating the Informational Scenarios to Sufficiency Scenarios, OCC creates a wider range of stress scenarios. Having a wider range of stress scenarios may, in turn, increase the likelihood that OCC will have sufficient collateral on hand to address a default without resorting to loss mutualization through the use of non-defaulting Clearing Members' contributions to the Clearing Fund. Because it avoids loss mutualization, the Proposed Rule Change is consistent with the safeguarding of securities and funds which are in OCC's custody or control.

OCC's proposed changes to its Sufficiency Stress Tests also may increase, and cannot decrease, the amount of financial resources that OCC collects to address credit losses that could arise from the default of a Clearing Member. Based on the impact analyses filed with this Proposed Rule Change, the proposed change could result in OCC calling for additional resources available for resolving a member default. The data provided demonstrates that the proposed scenarios could produce more conservative results relative to the current 2008 largest rally/decline scenarios. Because OCC does not propose removing any of its existing Sufficiency Scenarios, the proposed changes could not reduce the resources OCC would collect. By maintaining, and potentially increasing, the financial resources OCC collects to address credit losses that could arise from the default of a Clearing Member, the proposed change to OCC's stress tests would potentially help OCC recover from the default of a Clearing Member and could make OCC's default waterfall more robust. As such, it would increase the likelihood that OCC would be able to provide clearing services during and after a Clearing Member default, which is consistent with OCC's ability to promptly and accurately clear and settle securities transactions for participants in the options markets during periods of market stress.

Separately, the proposed changes to conform OCC's Rules 609 and 1001 to current practice would continue to support OCC's risk management systems. As described above, the proposed changes would make minor

changes, remove unnecessary language, and acknowledge that, when determining whether to call for additional collateral based on OCC's Sufficiency Stress Tests, if a Clearing Member Group is subject to intra-day margin calls under more than one Sufficiency Stress Test, only the largest margin call will be applied and remain in effect until the next monthly resizing. Further, OCC proposes that it account for margin called as a result of a Sufficiency Stress Test breach under Rule 609 when determining whether it must increase the size of the Clearing Fund. Such changes would not reduce the total resources called by OCC. Continuing to require that members contribute resources based on the exposures they pose (as measured by the Sufficiency Scenarios) would increase the likelihood that OCC would have sufficient resources to manage its exposure to such a member in the event of a default. This would increase the likelihood that OCC could promptly and accurately clear transactions in the event of a default. Additionally, requiring members to contribute resources based on the exposures they pose would increase OCC's ability to manage a default with the defaulter's resources and would reduce the risk that OCC would be required to use the resources of other members to manage a default, consistent with OCC's ability to safeguard the funds and securities of such non-defaulting members.

Further, OCC's rules require that members meet such calls in a timely manner.⁴⁴ As a result, OCC's rules do not preclude OCC from taking additional steps, such as suspending a member, if it does not receive the required resources promptly. Thus, OCC's rules, both current and as proposed, allow OCC to act quickly to mitigate potential losses and liquidity shortfalls. Such authority reduces the risk that OCC would be unable to continue providing clearance and settlement services, which is consistent with the promotion of the prompt and accurate settlement of securities for the markets OCC serves.

Based on the foregoing, the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁴⁵

B. Consistency With Rule 17Ad-22(e)(4) Under the Act

Rule 17Ad-22(e)(4) requires covered clearing agencies to establish,

⁴⁴ See e.g., OCC Rule 609(a) (requiring that members meet intra-day margin calls within one hour of issuance).

⁴⁵ 15 U.S.C. 78q-1(b)(3)(F).

implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes by testing the sufficiency of its total financial resources available to meet the minimum financial resource requirements under Rules 17Ad-22(e)(4)(i) through (iii) under the Act.⁴⁶ Under Rule 17Ad-22(e)(4)(vi)(A), OCC's policies and procedures should provide that OCC conduct such stress testing of its total financial resources once each day using standard predetermined parameters and assumptions.⁴⁷

The Proposed Rule Change is consistent with Rule 17Ad-22(e)(4)(vi) because it broadens the scope of stress scenarios that OCC conducts to test its financial resources. Expanding the scope of stress scenarios against which OCC monitors its financial resources would increase the likelihood that OCC maintains sufficient financial resources at all times.⁴⁸ This Proposed Rule Change would expand the scope of stress scenarios by elevating two Informational Scenarios to Sufficiency Scenarios. This expansion could result in the collection of additional resources available for resolving a member default, which, in turn, would increase the likelihood that OCC maintains sufficient financial resources at all times.⁴⁹

Based on the foregoing, the Proposed Rule Change is consistent with the requirements of Rule 17Ad-22(e)(4) under the Act.⁵⁰

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act, and in particular, Section 17A(b)(3)(F) of the Act⁵¹ and Rule 17Ad-22(e)(4).⁵²

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the

⁴⁶ 17 CFR 240.17Ad-22(e)(4)(vi).

⁴⁷ 17 CFR 240.17Ad-22(e)(4)(vi)(A).

⁴⁸ See Securities Exchange Act Release No. 90827 (Dec. 30, 2020), 86 FR 659, 661 (Jan. 6, 2021) (File No. SR-OCC-2020-015); Securities Exchange Act Release No. 83735 (July 27, 2018), 83 FR 37855, 37863 (Aug. 2, 2018) (File No. SR-OCC-2018-008).

⁴⁹ The Proposed Rule Change does not alter OCC's daily implementation of its Sufficiency Stress Tests. Notice, 89 FR at 44753. Thus, the OCC's Sufficiency Stress Testing continues to be consistent with Rule 17Ad-22(e)(4)(vi)(A)'s daily testing requirements.

⁵⁰ 17 CFR 240.17Ad-22(e)(4).

⁵¹ 15 U.S.C. 78q-1(b)(3)(F).

⁵² 17 CFR 240.17Ad-22(e)(4).

⁴³ OCC Rule 609(a)(5); OCC Rule 1001(c).

Proposed Rule Change (SR-OCC-2024-006) be, and hereby is, approved.⁵³

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁵⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-14971 Filed 7-8-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-629, OMB Control No. 3235-0719]

Proposed Collection; Comment Request; Extension: Rules 13n-1-13n-12; Form SDR

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the existing collection of information provided for in Rules 13n-1 through 13n-12 (17 CFR 240.13n-1 through 240.13n-12) and Form SDR (“Rules”), under the Securities Exchange Act of 1934 (15 U.S.C. 78m(n)(3) *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Under the Rules, security-based swap data repositories (“SDRs”) are required to register with the Commission by filing a completed Form SDR (the filing of a completed Form SDR also constitutes an application for registration as a securities information processor (“SIP”). SDRs are also required to abide by certain minimum standards set out in the Rules, including a requirement to update Form SDR, abide by certain duties and core principles, maintain data in accordance with the rules, keep systems in accordance with the Rules, keep records, provide reports to the Commission, maintain the privacy of security-based swaps (“SBSs”) data, make certain disclosures, and designate a Chief Compliance Officer. In addition, there are a number of collections of information contained in the Rules. The information collected pursuant to the

Rules is necessary to carry out the mandates of the Dodd-Frank Act and help ensure an orderly and transparent market for SBSs.

Assuming a maximum of three SDRs, the Commission estimates that the total burden for the Rules and Form SDR for all respondents is 127,505 hours annually and approximately 382,511 burden hours for all respondents over three years. In addition, the Commission estimates that the total cost of the Rules and Form SDR for all respondents is approximately \$29,905,416 annually and approximately \$89,716,248 for all respondents over three years.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by September 9, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549, or send an email to: PRA_Mailbox@sec.gov.

Dated: July 3, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-15026 Filed 7-8-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100459; File No. SR-NYSE-2023-36]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Withdrawal of Proposed Rule Change Regarding Enhancements to Its DMM Program

July 3, 2024.

On October 23, 2023, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder, ² a proposed rule change to amend its Designated Market Maker (“DMM”) program. The proposed rule change was published for comment in the **Federal Register** on November 13, 2023. ³ On December 13, 2023, pursuant to Section 19(b)(2) of the Act, ⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change. ⁵ On February 9, 2024, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act ⁶ to determine whether to approve or disapprove the proposed rule change. ⁷ On May 8, 2024, pursuant to Section 19(b)(2) of the Act, ⁸ the Commission designated a longer period within which to approve or disapprove the proposed rule change. ⁹ On June 28, 2024, NYSE withdrew the proposed rule change (SR-NYSE-2023-36).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. ¹⁰

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-15036 Filed 7-8-24; 8:45 am]

BILLING CODE 8011-01-P

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98869 (Nov. 6, 2023), 88 FR 77625 (Nov. 13, 2023) (SR-NYSE-2023-36). Comments received on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nyse-2023-36/srnyse202336.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 99161 (Dec. 13, 2023), 88 FR 87829 (Dec. 19, 2023). The Commission designated February 11, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 99511 (Feb. 9, 2024), 89 FR 11893 (Feb. 15, 2024).

⁸ 15 U.S.C. 78s(b)(2).

⁹ See Securities Exchange Act Release No. 100080 (May 8, 2024), 89 FR 42007 (May 14, 2024). The Commission designated July 10, 2024, as the date by which the Commission shall approve or disapprove the proposed rule change.

¹⁰ 17 CFR 200.30-3(a)(12).

⁵³ In approving the Proposed Rule Change, the Commission considered the proposal’s impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100461; File No. SR–NASDAQ–2024–029]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify the Application of Bid Price Compliance Periods

July 3, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on June 21, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the application of the bid price compliance periods where a company takes action that causes non-compliance with another listing requirement.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Reverse stock splits have the effect of increasing a company’s stock price by

consolidating the outstanding shares. Companies may effect a reverse stock split to regain compliance with the minimum bid price required by Exchange listing rules (the “Bid Price Requirement”).³ The share reduction caused by the reverse stock split results in a proportional reduction in the number of Publicly Held Shares⁴ and, depending on how fractional shares are treated, may also reduce the number of holders of the company’s securities. As such, implementation of a reverse stock split could trigger non-compliance with other listing rules and start a new deficiency process.⁵ Nasdaq believes that this scenario creates confusion for investors around the Company’s ability to maintain compliance with the Listing Rules and could negatively impact investor confidence in the market. Accordingly, Nasdaq believes that in such cases the company should not be afforded additional time to regain compliance with that newly created deficiency.

Specifically, Nasdaq is proposing to amend Rule 5810(c)(3)(A) to provide that a company will not be considered to have regained compliance with its Bid Price Requirement if the company takes an action to achieve compliance with that requirement (e.g., a reverse stock split), and that action results in the company’s security falling below the numeric threshold for another listing requirement, without regard to any

³ Each tier of Nasdaq includes a requirement that specified securities maintain a \$1.00 minimum bid price. See, e.g., Rule 5550(a)(2) (Primary Equity Security listed on the Nasdaq Capital Market); Rule 5450(a)(1) (Primary Equity Security listed on the Nasdaq Global or Global Select Markets). Upon a company’s failure to satisfy the applicable Bid Price Requirement, Rule 5810(3)(A) provides for an automatic compliance period of 180 calendar days for the company to achieve compliance with the Bid Price Requirement. Cf. NYSE American Company Guide Section 1003(f)(v), which discusses low selling price issues but does not impose a fixed minimum price requirement nor a timeline for how long a company could remain below \$1.00.

⁴ Rule 5005(a)(35) defines “Publicly Held Shares” as: shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding.

⁵ See, e.g., Rules 5550(a)(3) and (4) (requiring 300 public holders and at least 500,000 Publicly Held Shares for Primary Equity Securities listed on the Nasdaq Capital Market) and Rules 5450(a)(2), 5450(b)(1)(B), 5450(b)(2)(B) and 5450(b)(3)(B) (requiring 400 total holders and, depending on other characteristics of the company, either 750,000 or 1.1 million Publicly Held Shares for Primary Equity Securities listed on the Nasdaq Global Market). Upon a company’s failure to satisfy the applicable holder or number of Publicly Held Shares requirement, Rule 5810(c)(2)(A) allows the company a 45-calendar day period to provide a plan to regain compliance to Nasdaq Staff and Rule 5810(c)(2)(B) provides that Nasdaq staff may grant an extension of up to 180 calendar days for the company to achieve compliance.

compliance process otherwise available for that listing requirement.

For example, consider a company listed on the Nasdaq Capital Market (“Company A”) that has 1,600,000 Publicly Held Shares. In order to regain compliance with the Bid Price Requirement under Rule 5550(a)(2), Company A effects a reverse stock split at a ratio of 1-for-4. This reverse stock split initially increases Company A’s stock price above \$1.00. Assuming Company A thereafter maintains a closing bid price above \$1.00 for ten (10) consecutive business days, under current Rule 5810(c)(3)(A), Company A will achieve compliance with the Bid Price Requirement at the conclusion of the tenth (10th) consecutive business day.⁶ However, in this example, at the same time that the reverse stock split increased Company A’s stock price, the 1-for-4 reverse stock split also reduced the number of Publicly Held Shares from 1,600,000 to 400,000, causing Company A to no longer satisfy the minimum number of Publicly Held Shares required to remain listed on the Nasdaq Capital Market.⁷ As a result, under these circumstances, the reverse stock split would allow Company A to regain compliance with the Bid Price Requirement of Rule 5550(a)(2) while at the same time causing non-compliance with the minimum Publicly Held Shares requirement of Rule 5550(a)(4). Under Nasdaq’s current rules, Nasdaq would notify the company about this new deficiency and the company would be afforded 45 calendar days to submit a plan to regain compliance and could be afforded up to 180 calendar days to regain compliance.⁸

Nasdaq believes that it is not appropriate for a company to receive additional time to cure non-compliance with such newly violated listing standard. Nasdaq is therefore proposing this rule change to prevent companies from benefiting from additional time for the subsequent deficiency that was ultimately caused by the company’s non-compliance with the Bid Price Requirement.

Under the proposed amendment, Company A in the example above would continue to be considered non-compliant with the Bid Price Requirement until *both* the new

⁶ See Rule 5810(c)(3)(A) providing that a company achieves compliance during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days during the applicable compliance period, unless Staff exercises its discretion to extend this 10-day period as discussed in Rule 5810(c)(3)(H).

⁷ The continued listing requirement for publicly held shares on the Nasdaq Capital Market is 500,000 Publicly Held Shares. See Rule 5550(a)(4).

⁸ See Rule 5810(c)(2) and IM–5810–2.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

Publicly Held Shares deficiency is cured *and* thereafter the company maintains a \$1.00 bid price for a minimum of ten (10) consecutive business days.⁹ All of this must be accomplished during the compliance period applicable to the initial Bid Price Requirement deficiency. Thus, the proposed rule would *not* allow Company A to submit a plan to regain compliance with the Publicly Held Shares requirement and would instead require Company A to regain compliance with both rules within the applicable compliance period for the Bid Price Requirement pursuant to Rule 5810(3)(A).

Nasdaq believes the proposed amendment will protect investors and provide additional clarity to companies and market participants by enhancing the quality of a compliance determination following a company's deficiency for failure to comply with the Bid Price Requirement.¹⁰

2. Statutory Basis

The Exchange believes that its proposed change to Rule 5810(c)(3)(A) is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to protect investors and the public interest. The proposed rule change is designed to enhance Nasdaq's listing standards, thereby strengthening the quality of listed companies and protecting investors. Specifically, the proposal would protect investors by preventing a company from requesting or receiving a compliance determination and communicating to investors that it has regained compliance with the Listing Rules until it also has cured any concerns with numeric listing requirements caused by its actions to cure the initial Bid Price Requirement deficiency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not expect that its proposal will have an adverse impact on competition among listed companies

because the proposed change will apply equally to all similarly situated companies seeking to regain compliance with the Bid Price Requirement and will confer no relative advantage or disadvantage upon any listed company. Further, the Exchange does not expect that its proposal will have an adverse impact on competition with other listed venues. The market for listing services is extremely competitive and listed companies may freely choose alternative venues for listing. Such other venues will remain free to adopt similar rules, if they view them as advantageous, or to maintain a rulebook with no minimum price requirement to the extent allowed by the Commission.¹³ As such, the Exchange does not believe that the proposed rule change will impose an unnecessary or inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-029 on the subject line.

¹³ See NYSE American Company Guide Section 1003(f)(v), which discusses low selling price issues but does not impose a fixed minimum price requirement nor a timeline for how long a company could remain below \$1.00.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2024-029. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-029 and should be submitted on or before July 30, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-15038 Filed 7-8-24; 8:45 am]

BILLING CODE 8011-01-P

⁹ Nasdaq Staff could exercise its discretion under Rule 5810(c)(3)(H) to extend this 10-day period to up to 20 days.

¹⁰ Nasdaq is considering other changes to the delisting process applicable to companies that are non-compliant with the Bid Price Requirement. Any such changes will be subject to a separate rule filing.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100457; File No. SR–NYSEAMER–2024–42]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Make Certain Conforming Clarifying Changes to Rule 601 To Harmonize With NYSE Arca Rule 10.16

July 2, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b–4 thereunder,³ notice is hereby given that on June 18, 2024, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to certain conforming clarifying changes to Rule 601 (Sanctions Guidelines) to harmonize with Rule 10.16 (Sanctioning Guidelines—Options) of its affiliate NYSE Arca, Inc. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes certain conforming clarifying changes to Rule 601 (Sanctions Guidelines) to harmonize with Rule 10.16 (Sanctioning Guidelines—Options) of its affiliate NYSE Arca, Inc. (“NYSE Arca”).

In 2023, the Exchange adopted a new Rule 601 incorporating sanctions guidelines similar to Cboe Exchange, Inc. Rule 13.11, Supplementary Material .01, in place of the original sanction guidelines adopted pursuant to Section IV.B.i of the Commission’s September 11, 2000 Order Instituting Administrative Proceedings Pursuant to Section 19(h)(1) of the Act (the “2000 Order”).⁴ Recently, NYSE Arca adopted Rule 601 nearly verbatim as new NYSE Arca Rule 10.16, with three minor differences in the first two full paragraphs of the rule which further clarified the covered entities, provided examples of how disciplinary matters can be resolved, and clarified that the CRO’s delegates would be individuals with responsibility for the adjudication of disciplinary actions and thus included in the rule’s definition of “Adjudicatory Bodies.”⁵ In addition, NYSE Arca referenced summary sanctions in options-related matters governed by Rule 10.13 and appeals of Floor citations and summary sanctions governed by Rule 10.11 as examples of how disciplinary matters can be resolved, both of which are inapplicable to the Exchange.

In order to harmonize with NYSE Arca Rule 10.16 and add clarity and consistency to Rule 601, the Exchange proposes to incorporate the three changes from the NYSE Arca rule, as follows.

⁴ See Securities Exchange Act Release No. 98798 (October 25, 2023), 88 FR 74544 (October 31, 2023) (SR–NYSEAMER–2023–49) (Notice of Filing and Immediate Effectiveness of Proposed Change To Delete Legacy Disciplinary Rules 475, 476, 476A, and 477 and Make Conforming Changes to Rule 41, Rules 8001, 8130(d), 8320(d), 9001, 9216(b)(1), 9810(a), and 781 of the Office Rules, Rules 2A, 12E, 3170(a)(3), 902NY and Adopt a New Rule 600 and Make Conforming Changes to Rules 3170(C)(3), and Adopt a New Rule 601). See generally Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282.

⁵ See Securities Exchange Act Release No. 100047 (May 2, 2024), 89 FR 38939 (May 8, 2024) (SR–NYSEArca–2024–34). NYSE Arca adopted the original version of Rule 10.16 pursuant to the 2000 Order. See Securities Exchange Act Release Nos. 45416 (February 7, 2002), 67 FR 6777 (February 13, 2002) (SR–PCX–2001–23) (Notice); 45567 (March 15, 2002), 67 FR 13392 (March 22, 2002) (SR–PCX–2001–23) (Order).

First, the Exchange would add “against ATP Holders, ATP Firms and covered persons as defined in Rule 9120(g)” following “To promote consistency and uniformity in the imposition of penalties” in the first sentence. Second, in the same sentence, the Exchange would add “, including letters of acceptance, waiver and consent,” following “appropriate remedial sanctions through the resolution of disciplinary matters.” The Exchange does not propose to adopt the NYSE Arca-specific references to summary sanctions in options-related matters governed by Rule 10.13 and appeals of Floor citations and summary sanctions governed by Rule 10.11. Third, the Exchange would add “and his or her delegates” following CRO in the second paragraph, thus bringing the CRO’s delegates within the definition of “Adjudicatory Bodies” therein.⁶

As proposed, Rule 601 would be amended as follows (deletions (bracketed) and additions (italicized)):

To promote consistency and uniformity in the imposition of penalties *against ATP Holders, ATP Firms and covered persons as defined in Rule 9120(g)*, the following Principal Considerations in Determining Sanctions should be considered in connection with the imposition of sanctions in all cases in determining appropriate remedial sanctions through the resolution of disciplinary matters, *including letters of acceptance, waiver and consent*, [through]offers of settlement, *and* [or after]formal disciplinary hearings.

These Principal Considerations are not intended to be absolute. Based on the facts and circumstances presented in each case, the various individuals with responsibility for the adjudication of disciplinary actions, including the CRO *and his or her delegates*, Hearing Panels, Extended Hearing Panels, Hearing Officers, the Committee for Review, and the Board of Directors (collectively, “Adjudicatory Bodies”), may consider aggravating and mitigating factors in addition to those listed below.

No other changes are proposed to Rule 601.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of

⁶ For the further avoidance of doubt, neither the proposed list of ways that a disciplinary matter can be resolved nor the persons and entities comprising the definition of Adjudicatory Bodies as amended by this filing in Rule 601 are intended to be exhaustive.

⁷ 15 U.S.C. 78f(b).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

Section 6(b)(5),⁸ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that harmonizing its sanction guidelines to incorporate certain clarifying conforming changes based on its affiliate's version of the rule would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed changes would add clarity and consistency to the Exchange's rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules. Finally, the Exchange believes that the proposed changes would promote fairness and consistency in the marketplace by eliminating differences and harmonizing language related to sanction guidelines for options market participants across affiliates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but is rather concerned with making conforming clarifying changes to the Exchange rules. Since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6)¹⁰ thereunder. Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that it may become operative immediately upon filing to allow the Exchange to make conforming, clarifying changes that harmonize its sanction guidelines with the version adopted by its affiliate. The Commission believes that, as described above, the Exchange's proposal does not raise any new or novel issues. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative upon filing.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2024-42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NYSEAMER-2024-42. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

submissions should refer to file number SR-NYSEAMER-2024-42 and should be submitted on or before July 30, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-14973 Filed 7-8-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-373, OMB Control No. 3235-0422]

Proposed Collection; Comment Request; Extension: Rule 23c-3 and Form N-23c-3

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the “Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 23c-3 (17 CFR 270.23c-3) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) permits a registered closed-end investment company (“closed-end fund” or “fund”) that meets certain requirements to repurchase common stock of which it is the issuer from shareholders at periodic intervals, pursuant to repurchase offers made to all holders of the stock. The rule enables these funds to offer their shareholders a limited ability to resell their shares in a manner that previously was available only to open-end investment company shareholders.

A closed-end fund that relies on rule 23c-3 must send shareholders a notification that contains specified information each time the fund makes a repurchase offer (on a quarterly, semi-annual, or annual basis, or, for certain funds, on a discretionary basis not more often than every two years). The fund also must file copies of the shareholder notification with the Commission (electronically through the Commission’s Electronic Data Gathering, Analysis, and Retrieval System (“EDGAR”)) on Form N-23c-3,

a filing that provides certain information about the fund and the type of offer the fund is making.¹ The fund must describe in its annual report to shareholders the fund’s policy concerning repurchase offers and the results of any repurchase offers made during the reporting period. The fund’s board of directors must adopt written procedures designed to ensure that the fund’s investment portfolio is sufficiently liquid to meet its repurchase obligations and other obligations under the rule. The board periodically must review the composition of the fund’s portfolio and change the liquidity procedures as necessary. The fund also must file copies of advertisements and other sales literature with the Commission as if it were an open-end investment company subject to Section 24 of the Investment Company Act (15 U.S.C. 80a-24) and the rules that implement Section 24. Rule 24b-3 under the Investment Company Act (17 CFR 270.24b-3), however, exempts the fund from that requirement if the materials are filed instead with the Financial Industry Regulatory Authority (“FINRA”).

The requirement that the fund send a notification to shareholders of each offer is intended to ensure that a fund provides material information to shareholders about the terms of each offer. The requirement that copies be sent to the Commission is intended to enable the Commission to monitor the fund’s compliance with the notification requirement. The requirement that the shareholder notification be attached to Form N-23c-3 is intended to ensure that the fund provides basic information necessary for the Commission to process the notification and to monitor the fund’s use of repurchase offers. The requirement that the fund describe its current policy on repurchase offers and the results of recent offers in the annual shareholder report is intended to provide shareholders current information about the fund’s repurchase policies and its recent experience. The requirement that the board approve and review written procedures designed to maintain portfolio liquidity is intended to ensure that the fund has enough cash or liquid securities to meet its repurchase obligations, and that written procedures are available for review by shareholders and examination by the Commission. The requirement that the fund file advertisements and sales

literature as if it were an open-end fund is intended to facilitate the review of these materials by the Commission or FINRA to prevent incomplete, inaccurate, or misleading disclosure about the special characteristics of a closed-end fund that makes periodic repurchase offers.

The Commission staff estimates that 860 funds make use of rule 23c-3 annually, including 14 funds that are relying upon rule 23c-3 for the first time. The Commission staff estimates that on average a fund spends 89 hours annually in complying with the requirements of the Rule and Form N-23c-3, with funds relying upon rule 23c-3 for the first time incurring an additional one-time burden of 28 hours. The Commission therefore estimates the total annual hour burden of the rule’s and form’s paperwork requirements to be 7,512 hours. In addition to the burden hours, the Commission staff estimates that the average yearly cost to each fund that relies on rule 23c-3 to print and mail repurchase offers to shareholders is about \$38,003.10. The Commission estimates total annual cost is therefore about \$3,040,248.

Estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of the rule and form is mandatory only for those funds that rely on the rule in order to repurchase shares of the fund. The information provided to the Commission on Form N-23c-3 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by September 9, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

¹ Form N-23c-3, entitled “Notification of Repurchase Offer Pursuant to Rule 23c-3,” requires the fund to state its registration number, its full name and address, the date of the accompanying shareholder notification, and the type of offer being made (periodic, discretionary, or both).

¹⁶ 17 CFR 200.30-3(a)(12), (59).

under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: July 2, 2024.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024–14977 Filed 7–8–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100458; File No. SR–FINRA–2024–010]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure)

July 2, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that on June 27, 2024, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b–4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure), which governs the information FINRA releases to the public via FINRA’s BrokerCheck® tool, to exclude from release through BrokerCheck the street address of a registered location that is reported and identified to FINRA as a private residence.⁴ The proposed rule change

would help address privacy and safety concerns raised by broker-dealer firms and their associated persons about the release through BrokerCheck of the full address of an associated person’s private residential registered location.⁵

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions is in brackets.

* * * * *

8300. SANCTIONS

* * * * *

8312. FINRA BrokerCheck Disclosure

(a) through (f) No Change.
(g) FINRA shall not release:
(1) information reported as a Social Security number, residential history, [or] physical description, *the street address of a registered location identified as a private residence*, information that FINRA is otherwise prohibited from releasing under Federal law, or information that is provided solely for use by regulators. FINRA reserves the right to exclude, on a case-by-case basis, information that contains confidential customer information, offensive or potentially defamatory language or information that raises

definitions under Rule 3110(f)(1) and Rule 3110(f)(2), respectively, must register with FINRA through the use of Form BR (Uniform Branch Office Registration Form) (“Form BR”); provided, however, a private residence that qualifies for an exclusion from the “branch office” definition under Rule 3110(f)(2) or is eligible to be designated as a Residential Supervisory Location (“RSL”) under Rule 3110.19 would not have to be registered with FINRA. Rule 3110.19 became effective on June 1, 2024, and allows member firms to designate as an RSL the private residence of an associated person of a member firm at which they engage in specified supervisory activities, subject to certain safeguards and limitations, as a non-branch location. See *Regulatory Notice 24–02* (January 2024) (“Notice 24–02”). For purposes of the proposed rule change, an OSJ or branch office will be collectively referred to as a “registered location” and a registered location that is also a private residence will be referred to as a “private residential registered location.” For purposes of the proposed rule change, the street address would consist of the house number (and apartment or unit number, as applicable), street name, and for U.S. locations, the postal code (“street address”).

⁵ As noted below, BrokerCheck displays certain information regarding (i) current or former FINRA member firms (“member firms”) and current or former associated persons of such member firms (“associated persons of member firms”) and (ii) current or former broker-dealers that are members of a self-regulatory organization (“SRO”), other than FINRA, that uses the Central Registration Depository (“CRD”) for registration purposes (“non-member firms”), and current or former associated persons of such non-member firms (“associated persons of non-member firms”). For purposes of the proposed rule change, associated persons of member firms and associated persons of non-member firms will be collectively referred to as “associated persons,” and member firms and non-member firms will be collectively referred to as “broker-dealer firms.”

significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns;

(2) through (7) No Change.

• • • Supplementary Material: -----
-

.01 through .03 No Change.

* * * * *

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Background

i. FINRA’s BrokerCheck Tool

BrokerCheck is a free tool available on FINRA’s website that is designed to help investors make informed choices about the associated persons and broker-dealer firms with which they conduct or may conduct business.⁶ The information that FINRA releases to the public through BrokerCheck is derived from CRD, the central licensing and registration system that FINRA operates for the benefit of FINRA, the SEC, other SROs, state securities regulators and broker-dealer firms. The information maintained in the CRD system is reported by broker-dealer firms, associated persons and regulatory authorities in response to questions on the uniform registration forms.⁷ These forms are used to collect registration information about broker-dealer firms and associated persons, including, among other things, registrations currently held, office locations, ownership information, and administrative, regulatory, criminal history, financial and other information.

⁶ BrokerCheck is available at <http://www.brokercheck.finra.org>.

⁷ The uniform registration forms are Form BD (Uniform Application for Broker Dealer Registration), Form BDW (Uniform Request for Broker-Dealer Withdrawal), Form BR, Form U4, Form U5 and Form U6 (Uniform Disciplinary Action Reporting Form).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 17 CFR 240.19b–4(f)(6).

⁴ A private residence that meets the office of supervisory jurisdiction (“OSJ”) or branch office

The dissemination and accessibility of registration information maintained in the CRD system serves three important purposes. First, the CRD system provides securities regulators with a critical regulatory tool to oversee the activities of broker-dealer firms and associated persons and to detect regulatory problems. Second, broker-dealer firms use information in the CRD system to help them make informed employment decisions.⁸ Finally, to comply with the Exchange Act, FINRA makes a subset of the data maintained in the CRD system available through BrokerCheck so that the investing public can obtain information about associated persons and broker-dealer firms with which they conduct or may conduct business.⁹

Rule 8312 specifies which registration information FINRA must release to the public through BrokerCheck.¹⁰ Subject to specified exceptions described below,¹¹ investors are able to obtain information about broker-dealer firms and associated persons who are currently or were formerly registered with such broker-dealer firms, including the full address of any registered location where an associated person conducts business, even if the location is a private residence.¹² FINRA notes that BrokerCheck generally does not release the address of an unregistered location (*i.e.*, a non-branch location) and this practice would not be impacted by the proposed rule change.¹³

Rule 8312 also specifies information that FINRA does not release through BrokerCheck.¹⁴ For example, FINRA does not release through BrokerCheck information regarding examination scores or failed examinations,¹⁵ information reported as a Social Security number, residential history, or

physical description, information that FINRA is otherwise prohibited from releasing under Federal law, or information that is provided solely for use by regulators.¹⁶

While the Form U4 and Form BR historically have included a “Private Residence Check Box” to identify private residential registered locations, this information has been collected for the purpose of enabling regulators to appropriately prepare for and staff onsite examinations that are scheduled at a private residence (which may differ from those examinations taking place at a commercial office). Accordingly, FINRA had historically determined to display through BrokerCheck the full address of a registered location or private residential registered location, irrespective of whether such location is reported and identified as a private residence. However, in recent years, especially after the significant increase in work-from-home and hybrid working arrangements since the pandemic, broker-dealer firms and their associated persons have raised privacy and safety concerns to FINRA about the release through BrokerCheck of the full address of an associated person’s private residential registered location.

As a result, FINRA undertook an assessment of Rule 8312 to take into consideration such privacy and safety concerns. This assessment, as described below, is consistent with periodic assessments that FINRA conducts regarding the information it provides to the public through BrokerCheck. Based on such periodic assessments, FINRA has previously made numerous changes to strengthen BrokerCheck, including changes that have made BrokerCheck information easier to access¹⁷ and have expanded the types of information available.¹⁸

ii. Temporary Relief From Registration

In early response to the pandemic, many private and government employers closed their offices and their employees continued with their work from alternative locations such as private residences. The pandemic prompted FINRA and other regulators to provide temporary relief to member firms from certain regulatory requirements to address the public health crisis, including the Form BR Relief.¹⁹

The pandemic also prompted many broker-dealer firms to adopt a blended or hybrid work model, whereby associated persons work sometimes on-site in a commercial office setting and other times remotely in an alternative location such as a private residence. Based on feedback from broker-dealer firms received through various pandemic-related initiatives and other industry outreach,²⁰ FINRA believes that this model will endure. As noted above, starting on June 1, 2024, member firms, particularly those that have been relying on the Form BR Relief, must resume the obligation to, among other things, submit or update branch office applications on Form BR, as applicable, for those locations, including private residences, that do not otherwise meet an exclusion from branch office registration under Rule 3110(f)(2) or Rule 3110.19.²¹

b. Proposed Amendments to Rule 8312(g)(1)

As noted above, Rule 8312(g)(1) currently provides that FINRA shall not release information reported as a Social Security number, residential history, or physical description, information that

BrokerCheck of information already publicly disseminated through IAPD about individuals that are currently associated persons of broker-dealer firms who are, or were, licensed as investment adviser representatives).

¹⁹ See *Regulatory Notice* 20–08 (March 2020) (“*Notice* 20–08”) (describing pandemic-related business continuity planning, guidance and regulatory relief that included the temporary suspension of the requirement that member firms submit Form BR for any newly opened temporary office locations or space-sharing arrangements established as a result of the pandemic (“Form BR Relief”). The Form BR Relief expired on May 31, 2024, thus triggering the requirement under Article IV, Section 8 of the FINRA By-Laws that a member firm “shall promptly advise [FINRA] . . . of the opening, closing, relocation, change in designated supervisor, or change in designated activities of any branch office of such member not later than 30 days after the effective date of such change.” See *Notice* 24–02.

²⁰ See generally FINRA’s Key Topic: COVID–19/ Coronavirus (referencing, among other things, Frequency Asked Questions, temporary amendments to FINRA rules, and *Regulatory Notices*), located at: <https://www.finra.org/rules-guidance/key-topics/covid-19>.

²¹ See notes 4 and 19, *supra*.

⁸ As of December 31, 2023, over 67 million registrations for associated persons and investment adviser representatives have been processed through the CRD system over a period spanning more than 20 years.

⁹ 15 U.S.C. 78a *et seq.*

¹⁰ Other aspects of Rule 8312 include, in general, establishing a process to dispute the accuracy of certain information released through BrokerCheck; and permitting FINRA to provide, upon written request, a compilation of information about broker-dealer firms, subject to specified terms and conditions.

¹¹ See generally Rule 8312(g).

¹² BrokerCheck also displays information already publicly disseminated through the Investment Adviser Public Disclosure (“IAPD”) database about individuals that are currently associated persons of a broker-dealer firm who are, or were, licensed as investment adviser representatives. See Rule 8312(d).

¹³ See generally Rule 3110(f)(2) (listing the locations, including the residential locations, excluded from the branch office definition).

¹⁴ See note 11, *supra*.

¹⁵ See Rule 8312(b)(2)(E).

¹⁶ See Rule 8312(g)(1).

¹⁷ At the outset of FINRA’s public disclosure program, FINRA responded to all inquiries (made in writing or via a toll-free telephone number) by mailing or faxing a summary of an associated person’s or broker-dealer firm’s public information to the requestor. The request and delivery methods of such information eventually moved towards further electronic means by releasing some information on FINRA’s website and providing information in the form of an automated report. See generally *Notice to Members* 97–78 (November 1997) (referencing FINRA responding to inquiries made in writing, electronically, and telephonically); *Special Notice to Members* 98–71 (August 1998) (referencing public disclosure of some information on FINRA’s website); and *Notice to Members* 00–16 (March 2000) (announcing the ability to generate automated reports that draw disclosure information from CRD).

¹⁸ See, e.g., Securities Exchange Act Release No. 88760 (April 28, 2020), 86 FR 26502 (May 4, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–012) (amending Rule 8312 to allow the dissemination through

FINRA is otherwise prohibited from releasing under Federal law, or information that is provided solely for use by regulators. In light of the privacy and safety concerns raised by broker-dealer firms and associated persons regarding the release through BrokerCheck of the full address of an associated person's private residential registered location, coupled with the potentially significant change to the number of private residences that member firms may be required to register through Form BR following the expiration of the Form BR Relief,²² FINRA is proposing to amend Rule 8312(g)(1) to also exclude from release through BrokerCheck the street address of a private residential registered location that a broker-dealer firm has reported and identified to FINRA. To operationalize the proposed rule change, FINRA would implement a technology enhancement that would exclude from release on BrokerCheck the street address information of a private residential registered location when a broker-dealer firm selects the "Private Residence Check Box" on Form BR.²³

²² See note 19, *supra*. At this time, an estimate of such change to the number of private residences that member firms may be required to register is difficult to ascertain because of member firm reliance on the Form BR Relief and the potential use of RSLs in accordance with Rule 3110.19. See note 4, *supra*.

²³ FINRA does not believe that any changes to the uniform registration forms are necessary to conform with the proposed rule change. A broker-dealer firm establishes a registered location through the use of Form BR, which includes a "Private Residence Check Box" that a broker-dealer firm must select to report and identify to FINRA a private residential registered location. See "Specific Instructions for Completing Form BR" (which provide, in part, that applicants "[c]heck [the 'Private Residence Check Box'] if this [registered location] is also a private residence."). Under the proposed rule change, FINRA expects that the release of the street address of a private residential registered location on BrokerCheck would be controlled by the identification of such location as a private residence through the "Private Residence Check Box" on Form BR. Accordingly, where a private residential registered location is reported and identified to FINRA through the "Private Residence Check Box" on Form BR, BrokerCheck would release only the city and state, and for such a location outside the United States, the city and country. Similarly, under the proposed rule change, for an associated person located at an unregistered location, BrokerCheck would release only the city and state of the associated person's "Supervised From" address where such "Supervised From" location is a private residential registered location has been reported and identified to FINRA as a private residence through the "Private Residence Check Box" on Form BR. However, in some instances, reports or other aggregated information contained on other uniform registration forms and that is aggregated in CRD and released through BrokerCheck may nevertheless include the street address of a private residential registered location, even where such location is reported and identified to FINRA through the "Private Residence Check Box" on Form BR. For example, a broker-dealer

FINRA believes that the proposed rule change would address privacy and safety concerns raised by broker-dealer firms and associated persons regarding the release through BrokerCheck of the full address of an associated person's private residential registered location in a manner that would not significantly affect the protection of investors or the public interest in two principal ways. First, the proposed rule change would address the physical privacy and safety concerns raised to FINRA by excluding the street address of an associated person's private residential registered location from release on, and prevent potential bad actors from accessing this information through, BrokerCheck.²⁴ Second, the proposed rule change would address the digital privacy and safety of associated persons by excluding from public release on BrokerCheck a piece of personal information that has been linked to identity theft.²⁵

Furthermore, widespread changes in workplace models in the financial industry, coupled with a broader adoption by customers of digital means of interacting with broker-dealer firms, appear to place less relevance on the street address of an associated person's private residential registered location as a necessary data point in order for investors to engage in securities activities with an associated person or broker-dealer firm. In this regard, investors now commonly open accounts and place trades through online platforms, and associated persons and broker-dealer firms communicate with customers through email, video or meetings programs (e.g., WebEx, Zoom) in lieu of visiting a broker-dealer firm's physical offices.²⁶

firm's main address, as identified on Form BD, regardless of whether such location is also reported and identified to FINRA through the "Private Residence Check Box" on Form BR, would continue to be released through BrokerCheck.

²⁴ FINRA believes that the proposed rule change would also help address specific safety concerns raised by broker-dealer firms and associated persons regarding associated persons whose immediate family members work in certain public service roles (e.g., judges or other public officials) and reside in the same residence as the associated person, or associated persons who have obtained restraining orders or orders of protection against third parties.

²⁵ An associated person's home address information could be used by a bad actor in connection with an identity theft scheme. See generally What to Know About Identity Theft, Federal Trade Commission (April 2021), <https://consumer.ftc.gov/articles/what-know-about-identity-theft>.

²⁶ Many customers now expect their primary mode of interaction with their broker-dealer firm to be digital. In a study to learn about investors who, during the year 2020, entered into the markets using taxable, non-retirement investment accounts, FINRA found that nearly half (48%) of "new

As a result, FINRA believes that the proposed rule change would not significantly affect the protection of investors or the public interest as it would not impact the information on BrokerCheck that informs an investor's ability to make decisions about the associated person and broker-dealer firm with which the investor conducts or may conduct business, such as disciplinary history (e.g., certain customer complaints, regulatory actions and criminal or civil judicial proceedings); disclosure events (e.g., bankruptcies or liens); registration history; direct and indirect ownership information; affiliate and executive officer information; employment history and other business activities. In addition, FINRA notes that the proposed rule change would align with the approach in IAPD with respect to private residential address suppression, as IAPD currently excludes from release the house number (and apartment or unit number, as applicable), street name, and for U.S. locations, the postal code of a registered location that is reported and identified as a private residence on the relevant uniform investment adviser registration form.²⁷

In addition, FINRA does not believe that the proposed rule change would significantly affect the protection of investors or the public interest as there are other regulatory requirements that would continue to provide customers with the necessary broker-dealer firm contact information for the purposes of submitting inquiries or complaints.²⁸

investors," investors who opened a non-retirement investment account during 2020, indicated that they accessed their account primarily through a mobile app, and three-quarters (75%) of "holdover account owners," investors who maintained a taxable investment account opened before year 2020, indicated they accessed their account primarily through a website. See generally FINRA Investor Education Foundation & NORC, Consumer Insights: Money & Investing, Investing 2020: New Accounts and the People Who Opened Them at 11 (February 2021), https://www.finrafoundation.org/sites/finrafoundation/files/investing-2020-new-accounts-and-the-people-who-opened-them_1_0.pdf.

²⁷ See Investment Advisers Act Release No. 1897 (September 12, 2000), 65 FR 57438, 57439 (September 22, 2000) (Final Rule). The proposed rule change would therefore align IAPD's and BrokerCheck's treatment of the street address of a registered location that is reported and identified to FINRA as a private residence through the relevant uniform registration form (i.e., by excluding from release through BrokerCheck certain street address information regarding a private residential registered location that is reported and identified to FINRA through the "Private Residence Check Box" on Form BR).

²⁸ See, e.g., Exchange Act Rule 17a-3(a)(18)(ii) (which requires broker-dealer firms to maintain a record indicating that each of the broker-dealer firms' customers has been provided with a notice containing the address and telephone number of the department of the broker-dealer firm to which any

For example, among other obligations, broker-dealer firms would still be required to provide customers with periodic customer account statements that must clearly and prominently disclose the identity of the introducing firm and carrying firm (if different) and their respective contact information for customer service.²⁹ BrokerCheck would also continue to display the street address of a broker-dealer firm's main office, even where such address is a private residence.³⁰ Thus, a mailing address would be available if necessary.

FINRA also recognizes that some associated persons or broker-dealer firms may elect to "hold out" a private residential registered location that has been reported and identified to FINRA through the "Private Residence Check Box" on Form BR and disclose the street address of such private residential registered location to existing or prospective customers through their websites, stationery or otherwise. FINRA notes that the proposed rule change would not preclude an associated person or broker-dealer firm from holding out such private residential registered location to the public using such disclosure methods. The proposed rule change would govern only FINRA's release of this specified personal information on BrokerCheck.

Moreover, the full address of an associated person's private residential registered location that is reported and identified to FINRA through the "Private Residence Check Box" on Form BR would remain available to FINRA, the SEC, SROs, and state securities regulators through the CRD system.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change on June 27, 2024. As member firms work to submit or update branch office registrations or information on Form BR within the timeframes set forth in *Notice* 24-02, FINRA believes that a waiver would efficiently match the timing of the proposed rule change with such efforts and thereby address the privacy and safety concerns of broker-dealer firms and their associated persons relating to the release through BrokerCheck of the full address of an associated person's private residential registered location in a manner that

would not significantly affect the protection of investors or the public interest. Among those timeframes are May 31, 2024, the date on which the Form BR Relief expired, and June 1, 2024, the date on which member firms that have been relying on the Form BR Relief must resume the obligation to, among other things, submit or update branch office applications on Form BR for any space-sharing arrangements or office locations, including private residential locations, that were established as a result of the pandemic that have not otherwise been registered or updated with FINRA through Form BR as prescribed in Article IV, Section 8 of the FINRA By-Laws.³¹ In resuming this obligation, FINRA expects member firms will need to submit or update Form BRs for applicable locations and a waiver would allow member firms to report and identify private residential registered locations through the use of the "Private Residence Check Box" as part of a single process when updating such Form BRs and thus address the privacy and safety concerns of broker-dealer firms and their associated persons relating to the release through BrokerCheck of the full address of an associated person's private residential registered location.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³² which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change would help address privacy and safety concerns raised by broker-dealer firms and associated persons regarding the release of an associated person's street address on BrokerCheck in a manner that would not significantly affect the protection of investors or the public interest. As noted above, widespread changes in workplace models, coupled with a broader adoption by customers of digital means of interacting with broker-dealer firms and associated persons, appear to place less relevance on the street address of an associated person's private residential registered location as a necessary data point in order for investors to engage in securities activities with associated persons or broker-dealer firms.³³ Given the other information that would remain

on BrokerCheck, FINRA believes that excluding from release the street address, while continuing to display the city and state (or city and country), of a private residential registered location that is reported and identified to FINRA through the "Private Residence Check Box" on Form BR would not significantly affect an investor's ability to make informed decisions about an associated person or broker-dealer firm with which the investor conducts or may wish to conduct business. In addition, FINRA believes that the proposed rule change would not significantly affect the ability of an investor to contact their broker-dealer firm to raise concerns or complaints as there exist other regulatory requirements that would continue to provide customers with the necessary broker-dealer firm contact information.³⁴ The proposed rule change also would not impose appreciable costs on broker-dealer firms because the proposed rule change does not impose any new obligation on broker-dealer firms.³⁵ In addition, the proposed rule change would not preclude an associated person or broker-dealer firm from electing to "hold out" a private residential registered location that has been reported and identified to FINRA through the "Private Residence Check Box" on Form BR and disclose the street address of such private residential registered location to existing or prospective customers through their websites, stationery or otherwise.

Further, FINRA believes that the proposed rule change would not impact the efficiency with which broker-dealer firms report information to the CRD system, or the completeness of information available to FINRA, the SEC, SROs, and state regulators through the CRD system as the full address of an associated person's private residential registered location that is also reported and identified to FINRA through the "Private Residence Check Box" on Form BR would remain accessible to regulators.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any

³⁴ See notes 28 and 29, *supra*.

³⁵ See Article IV, Sec. 8(b) of the FINRA By-Laws (Registration of Branch Offices), which requires that member firms notify FINRA (via Form BR) of, among other things, the "opening, closing or relocation . . . of a branch office location." This requirement would apply to the identification and disclosure of a private residential registered location that is reported and identified to FINRA through the use of the "Private Residence Check Box" on Form BR.

complaints as to the customers' accounts may be directed).

²⁹ See FINRA Rule 2231.05 (Customer Account Statements, Information to be Disclosed on Statement).

³⁰ See note 23, *supra*.

³¹ See note 19, *supra*.

³² 15 U.S.C. 78o-3(b)(6).

³³ See note 26, *supra*.

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as discussed below.

Economic Impact Assessment

1. Regulatory Need

BrokerCheck is a free online tool that allows investors to research the background and qualifications of associated persons and broker-dealer firms with which they conduct or may conduct business. Excluding from release through BrokerCheck the street address of a private residential registered location that is reported and identified to FINRA through the “Private Residence Check Box” on Form BR would help address the privacy and safety concerns raised by broker-dealer firms and associated persons about the release of such information through BrokerCheck. The proposed rule change would not significantly affect the protection of investors or the public interest as it would not impact the information on BrokerCheck that informs an investor’s ability to make decisions about the broker-dealer firms or associated persons with which they conduct or may conduct business.

2. Economic Baseline

The economic baseline for the proposed rule change is the current regulatory framework, the information currently available through BrokerCheck and current investor use of BrokerCheck.

As of December 31, 2023, FINRA’s membership included 3,300 active member firms with 148,452 registered locations,³⁶ of which 20,109 were reported and identified on Form BR as private residences, accounting for about 22,038 associated persons of member firms.³⁷ Approximately 900 member firms have private residential registered locations (about 28% of FINRA’s membership), and the top five member firms making the greatest use of private

residential registered locations account for approximately 34% of all such locations. These data may not fully reflect the number of private residential registered locations due to temporary regulatory relief, including the Form BR Relief.³⁸

In 2023, BrokerCheck users conducted approximately 18.3 million searches of broker-dealer firms and associated persons. Street address information concerning existing private residential registered locations that could be excluded from release under the proposed rule change (*i.e.*, those that are reported and identified to FINRA through the “Private Residence Check Box” on Form BR) may persist in the public domain through other sources that retrieved information from BrokerCheck before the proposed change is implemented.

3. Economic Impacts

Due to the expiration of the Form BR Relief, many broker-dealer firms are likely to register additional private residential locations to accommodate hybrid workforce arrangements.³⁹ The proposed rule change would help to safeguard the privacy of the street addresses of associated persons’ private residential registered locations where such locations are reported and identified to FINRA through the “Private Residence Check Box” on Form BR, and thereby make broker-dealer firms and associated person more willing to register private residential locations with FINRA through Form BR, as applicable. FINRA expects that the competitive effects of not releasing the street address of a private residential registered location on BrokerCheck would be negligible; broker-dealer firms that currently use such locations may be more likely to expand their use.

For those private residential registered locations newly established after the proposed rule change would go into effect, the street address would be excluded from release through BrokerCheck where the “Private Residence Check Box” on Form BR is selected.⁴⁰ As previously noted, street address information concerning existing private residential registered locations that would be excluded from release under the proposed rule change might be available to the public through other channels that sourced BrokerCheck data prior to the effectiveness of the proposed rule change.

The proposed rule change would not impose appreciable costs on broker-

dealer firms, nor would it significantly affect the protection of investors or the public interest. In addition, the proposed rule change would not preclude an associated person or broker-dealer firm from electing to “hold out” a private residential registered location that has been reported and identified to FINRA through the “Private Residence Check Box” and disclose the street address of such private residential registered location to existing or prospective customers through their websites, stationery or otherwise. FINRA notes that the proposed rule change would not prohibit distributing such street address information selectively, but if doing so is costly, a broker-dealer firm could (as noted above) put the information on its website or not distribute it at all.

FINRA believes that the proposed rule change would not significantly affect the protection of investors or the public interest. Given the other information that would remain on BrokerCheck, FINRA does not believe that excluding the street address from release through BrokerCheck, while continuing to display the city and state (or city and country), of a private residential registered location that is reported and identified to FINRA through the “Private Residence Check Box” on Form BR would significantly affect the ability of an investor to make an informed decision about an associated person or broker-dealer firm with which the investor conducts or may conduct business. In particular, the disciplinary histories of a broker-dealer firm and its associated persons that are currently released through BrokerCheck would continue to be made available to the public. Excluding from release through BrokerCheck the street address of a private residential registered location that is reported and identified through the “Private Residence Check Box” on Form BR also would not significantly affect the ability of an investor to raise concerns or make complaints about the conduct of a broker-dealer firm or associated person.⁴¹ The proposed rule change would have no impact on investors’ continued access to the main address of a broker-dealer firm, even if the location is also reported and identified to FINRA as a private residence through the “Private Residence Check Box” on Form BR.⁴²

The proposed rule change would have no impact on broker-dealer firms’ registration requirements or supervision requirements. FINRA, the SEC, SROs, and state securities regulators would

³⁶ This count excludes broker-dealers with FINRA membership pending approval and withdrawn or terminated from FINRA membership.

³⁷ The number of registered locations and private residential registered locations are derived from information provided by broker-dealer firms on Form BR. Under the proposed rule change, for associated persons located at an unregistered location, BrokerCheck would release the city and state of the associated person’s “Supervised From” address where such “Supervised From” location is a private residential registered location that has been reported and identified to FINRA through the “Private Residence Check Box” on Form BR. See note 23, *supra*. FINRA estimates that approximately 6,300 associated persons of member firms working in unregistered locations are supervised from private residential registered locations that are reported and identified to FINRA through the “Private Residence Check Box” on Form BR.

³⁸ See note 22, *supra*.

³⁹ See note 22, *supra*.

⁴⁰ See note 23, *supra*.

⁴¹ See notes 28 and 29, *supra*.

⁴² See note 23, *supra*.

continue to have access to the full street addresses of all registered locations through the CRD system.

4. Alternatives Considered

No significant alternatives to these requirements were considered.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁴³ and Rule 19b-4(f)(6) thereunder.⁴⁴

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁴⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay requirement so that the proposed rule change may become operative on June 27, 2024. The Commission hereby grants the request. During the pandemic, FINRA temporarily suspended the requirement that member firms submit Form BR for any newly opened temporary office locations or space-sharing arrangements established as a result of the pandemic. This Form BR Relief expired on May 31, 2024, triggering a requirement for some of these offices to register with FINRA. As a result, FINRA expects that broker-dealer firms will register a potentially significant number of offices, including a potentially significant number of associated persons' private residences. The proposed rule change would exclude from release through BrokerCheck the street address of a private residential registered location that a broker-dealer firm has reported and identified to FINRA, helping address privacy and safety concerns raised by broker-dealer firms and their

associated persons. Extending these protections upon filing of the proposed rule change and without a 30-day operative delay would help ensure that they would apply to private residential registered locations immediately and align the timing of the proposed rule change with the resumption of the obligation to register certain offices following the pandemic, thereby minimizing potential disruptions to the registration process. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposed rule change is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-FINRA-2024-010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-FINRA-2024-010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-FINRA-2024-010 and should be submitted on or before July 30, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission Small Business Capital Formation Advisory Committee will hold a public meeting on Tuesday, July 30, 2024, via videoconference.

PLACE: The meeting will be conducted by remote means (videoconference) and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549. Members of the public may watch the webcast of the meeting on the Commission's website at www.sec.gov.

STATUS: The meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at www.sec.gov. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

MATTERS TO BE CONSIDERED: The agenda for the meeting includes matters relating

⁴³ 15 U.S.C. 78s(b)(3)(A).

⁴⁴ 17 CFR 240.19b-4(f)(6).

⁴⁵ 17 CFR 240.19b-4(f)(6)(iii).

⁴⁶ 17 CFR 200.30-3(a)(12).

to rules and regulations affecting small and emerging businesses and their investors under the federal securities laws.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.
Authority: 5 U.S.C. 552b.

Dated: July 5, 2024.
Vanessa A. Countryman,
Secretary.
[FR Doc. 2024-15107 Filed 7-5-24; 11:15 am]
BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20358 and #20359; TEXAS Disaster Number TX-20013]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Texas

AGENCY: U.S. Small Business Administration.
ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA-4781-DR), dated 05/23/2024.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.
Incident Period: 04/26/2024 through 06/05/2024.

DATES: Issued on 07/01/2024.
Physical Loan Application Deadline Date: 07/22/2024.
Economic Injury (EIDL) Loan Application Deadline Date: 02/24/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Texas, dated 05/23/2024, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Anderson, Baylor, Cochran, Delta, Henderson, Kaufman, Milam, Rockwall, Rusk, Van Zandt.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)
Rafaela Monchek,
Deputy Associate Administrator, Office of Disaster Recovery & Resilience.
[FR Doc. 2024-14938 Filed 7-8-24; 8:45 am]
BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20431; CALIFORNIA Disaster Number CA-20018 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of California

AGENCY: Small Business Administration.
ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California dated 07/01/2024.

Incident: Topanga Landslide & Closure of State Route 27.
Incident Period: 03/09/2024 through 06/02/2024.

DATES: Issued on 07/01/2024.
Economic Injury (EIDL) Loan Application Deadline Date: 04/01/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Los Angeles.

Contiguous Counties: California: Kern, Orange, San Bernardino, Ventura.

The Interest Rates are:

	Percent
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

	Percent
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for economic injury is 204310.
The State which received an EIDL Declaration is California.

(Catalog of Federal Domestic Assistance Number 59008)
Isabella Guzman,
Administrator.
[FR Doc. 2024-14831 Filed 7-8-24; 8:45 am]
BILLING CODE 8026-09-P

DEPARTMENT OF STATE

[Public Notice: 12396]

Specially Designated Global Terrorist Designations of Messaoud Belhireche, Talha al-Libi, Hamama Ould Khouier, and Hussein Ould Hammada

Acting under the authority of and in accordance with section 1(a)(ii)(B) of E.O. 13224, the Secretary of State has determined that the persons known as Messaoud Belhireche (also known as Usamah 'Abd-al-Wahid al-Jaza'iri Belkacem, Usama Abu-'Abd-al-Wahid al-Jaza'iri, Abu Usama al-Jaza'iri) and Talha al-Libi (also known as Sidi Mohamed Ould Mohamed Salem, Abderrahmane Ould Mohamed Salem, Abu Talha al-Azawadi, Abu Talha al-Barbouci) are leaders of Jama'at Nusrat al-Islam wal-Muslimin (JNIM), an entity whose property and interests in property are blocked pursuant to a determination by the Secretary of State pursuant to E.O. 13224, and the persons known as Hamama Ould Khouier (also known as Hamza Ould Koiya, Hamza Tabankort, Hamama Mehri) and Hussein Ould Hammada (also known as Alhoussein Ould Hamada, Zakaria Tabankort) are leaders of al-Murabitoun, an entity whose property and interests in property are blocked pursuant to a determination by the Secretary of State pursuant to E.O. 13224.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, the Secretary of State determines that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because

to do so would render ineffectual the measures authorized in the Order.

This determination shall be published in the **Federal Register**.

Dated: April 23, 2024.

Elizabeth H. Richard,

Coordinator for Counterterrorism.

[FR Doc. 2024-14940 Filed 7-8-24; 8:45 am]

BILLING CODE 4710-AD-P

DEPARTMENT OF STATE

[Public Notice: 12402]

Review of the Foreign Terrorist Organization Designation of al-Shabaab

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (“INA”), and in consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State has determined that the circumstances that were the basis for the designation of al-Shabaab (and other aliases) as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, the Secretary of State has determined that the designation of the aforementioned organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: May 2, 2024.

Elizabeth H. Richard,

Coordinator for Counterterrorism.

[FR Doc. 2024-14946 Filed 7-8-24; 8:45 am]

BILLING CODE 4710-AD-P

DEPARTMENT OF STATE

[Public Notice:12428]

Specially Designated Global Terrorist Designations of Harakat Ansar Allah al-Awfiya and Haydar Muzhir Ma’lak al-Sa’idi

Acting under the authority of and in accordance with section 1(a)(ii)(A) of Executive Order 13224, as amended (“E.O. 13224” or “Order”), the Secretary of State has determined that the person known as Harakat Ansar Allah al-Awfiya (also known as Ansar Allah al-Awfiya fi Souriya; Ansar Alah Alofia; Kayan al-Sadiq wa al-Ataa; Harakat al-Sadiq wa al-Ataa; God’s Loyal Supporters; The Movement of the Loyal

Partisans of God; Honesty and Giving Entity) is a foreign person who has committed or attempted to commit, poses a significant risk of committing, or has participated in training to commit, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Additionally, acting under the authority of and in accordance with section 1(a)(ii)(B) of E.O. 13224, the Secretary of State has determined that the person known as Haydar Muzhir Ma’lak al-Sa’idi (also known as Hayder Mezher Maalak al Saedi; Haydar al-Gharawi; Haider Ibrahim al-Gharawi; ‘Ali Haydar al-Gharawi) is a leader of Harakat Ansar Allah al-Awfiya, an entity whose property and interests in property are concurrently blocked pursuant to a determination by the Secretary of State pursuant to E.O. 13224.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, the Secretary of State determines that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This determination shall be published in the **Federal Register**.

Dated: June 17, 2024.

Elizabeth H. Richard,

Coordinator for Counterterrorism.

[FR Doc. 2024-14941 Filed 7-8-24; 8:45 am]

BILLING CODE 4710-AD-P

DEPARTMENT OF STATE

[Public Notice:12437]

Specially Designated Global Terrorist Designation of Adam Khamirzaev

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224, as amended (“E.O. 13224” or “Order”), the Secretary of State has determined that the person known as Adam Khamirzaev (also known as Adam Abu Darrar al-Shishani; Adam Islamovych Oliferchik; Andrei Guzun) is a leader of ISIS, an entity whose property and interests in property are blocked pursuant to a determination by the Secretary of State pursuant to E.O. 13224.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, the Secretary of State determines that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This determination shall be published in the **Federal Register**.

Dated: June 14, 2024.

Elizabeth H. Richard,

Coordinator for Counterterrorism.

[FR Doc. 2024-14944 Filed 7-8-24; 8:45 am]

BILLING CODE 4710-AD-P

DEPARTMENT OF STATE

[Public Notice:12436]

Specially Designated Global Terrorist Designations of Nordic Resistance Movement, Tor Fredrik Vejdeland, Pär Öberg, and Leif Robert Eklund

Acting under the authority of and in accordance with section 1(a)(ii)(A) of Executive Order 13224, as amended (“E.O. 13224” or “Order”), the Secretary of State has determined that the person known as Nordic Resistance Movement (also known as NRM, Nordiska motståndsrörelsen, NMR, Swedish Resistance Movement, Svenska motståndsrörelsen, SMR, NRM-Sweden, Finnish Resistance Movement, Suomen Vastarintaliike, NRM-Finland, Kohti Vapautta!, Norwegian Resistance Movement, Den norske motstandsbevegelsen, NRM-Norway) is a foreign person who has committed or attempted to commit, poses a significant risk of committing, or has participated in training to commit acts of terrorism that threaten the security of United States nationals or the national security, foreign policy, or economy of the United States.

Additionally, acting under the authority of and in accordance with section 1(a)(ii)(B)(2) of E.O. 13224, the Secretary of State has determined that the persons known as Tor Fredrik Vejdeland (also known as Fredrik Vejdeland), Pär Öberg, and Leif Robert Eklund (also known as Robert Eklund), are foreign persons who are leaders of Nordic Resistance Movement, an entity whose property and interests in property are concurrently blocked

pursuant to a determination by the Secretary of State pursuant to E.O. 13224.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, the Secretary of State determines that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This determination shall be published in the **Federal Register**.

Dated: June 14, 2024.

Elizabeth H. Richard,

Coordinator for Counterterrorism.

[FR Doc. 2024-14942 Filed 7-8-24; 8:45 am]

BILLING CODE 4710-AD-P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on August 1, 2024. The Commission will hold this hearing in person and telephonically. At this public hearing, the Commission will hear testimony on the projects listed in the **SUPPLEMENTARY INFORMATION** section of this notice and any additional testimony on the proposed rulemaking placed on the table at the June Commission meeting. Such projects and actions are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for September 12, 2024, which will be noticed separately. The public should note that this public hearing will be the only opportunity to offer oral comments to the Commission for the listed projects and actions. The deadline for the submission of written comments is August 12, 2024.

DATES: The public hearing will convene on August 1, 2024, at 6:30 p.m. The public hearing will end at 9:00 p.m. or at the conclusion of public testimony, whichever is earlier. The deadline for submitting written comments is Monday, August 12, 2024.

ADDRESSES: This public hearing will be conducted in person and virtually. You

may attend in person at Susquehanna River Basin Commission, 4423 N Front St., Harrisburg, Pennsylvania, or join by telephone at Toll-Free Number 1-877-304-9269 and then enter the guest passcode 2619070 followed by #.

FOR FURTHER INFORMATION CONTACT:

Jason Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238-0423 or joyler@srbc.gov. The proposed rulemaking that was placed on the table at the June Commission meeting can be viewed on the **Federal Register** website with the following citation: 89 FR 20148. Information concerning the project applications is available at the Commission's Water Application and Approval Viewer at <https://www.srbc.gov/waav>. Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at www.srbc.gov/regulatory/policies-guidance/docs/access-to-records-policy-2009-02.pdf.

SUPPLEMENTARY INFORMATION: In addition to hearing any additional testimony on the proposed rulemaking, the public hearing will cover the following projects:

Projects Scheduled for Action

1. *Project Sponsor and Facility:* Amazon Data Services, Inc. Project Facility: PHL100 Data Center Campus, Salem Township, Luzerne County, Pa. Application for consumptive use of up to 0.060 mgd (30-day average).

2. *Project Sponsor and Facility:* Ashland Area Municipal Water Authority, Butler Township, Schuylkill County, Pa. Application for renewal of groundwater withdrawal of up to 0.115 mgd (30-day average) from Well 5 (Docket No. 19931101). *Service area is located in an Environmental Justice area.*

3. *Project Sponsor:* Borough of Middletown. Project Facility: Middletown Water System, Borough of Middletown, Dauphin County, Pa. Application for renewal of groundwater withdrawal of up to 1.070 mgd (30-day average) from Well 6 (Docket No. 19970702). *Service area is located in an Environmental Justice area.*

4. *Project Sponsor and Facility:* Caernarvon Township Authority, Caernarvon Township, Berks County, Pa. Application for renewal of groundwater withdrawal of up to 0.317 mgd (30-day average) from Well 8 (Docket No. 19940902). *Service area is located in an Environmental Justice area.*

5. *Project Sponsor and Facility:* Chesapeake Appalachia, L.L.C. (Loyalsock Creek), Forksville Borough,

Sullivan County, Pa. Application for renewal and modification of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20190903).

6. *Project Sponsor and Facility:* Clear Water Technology, LLC (Middle Branch Wyalusing Creek), Forest Lake Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 1.440 mgd (peak day).

7. *Project Sponsor and Facility:* Dillsburg Area Authority, Franklin Township, York County, Pa. Application for renewal of groundwater withdrawal of up to 0.199 mgd (30-day average) from Well 3 (Docket No. 20081207).

8. *Project Sponsor:* Greater Hazleton Community-Area New Development Organization, Inc. Project Facility: CAN DO, Inc.—Corporate Center, Butler Township, Luzerne County, Pa. Application for renewal of groundwater withdrawal of up to 0.547 mgd (30-day average) from Well 1 (Docket No. 20090309).

9. *Project Sponsor and Facility:* Jersey Shore Area Joint Water Authority, Pine Creek Township, Clinton County, Pa. Application for groundwater withdrawal of up to 0.452 mgd (30-day average) from Pine Creek Well 1, which is an increase of the quantity established in Certificate of Registration No. GF-202012137.

10. *Project Sponsor and Facility:* JKLM Energy, LLC (Mill Creek), Rutland Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.600 mgd (peak day).

11. *Project Sponsor and Facility:* JKLM Energy, LLC (Tioga River), Lawrenceville Borough, Tioga County, Pa. Application for renewal with an increase of surface water withdrawal of up to 1.800 mgd (peak day) (Docket No. 20230610).

12. *Project Sponsor and Facility:* Municipal Authority of the Borough of Mansfield, Richmond Township, Tioga County, Pa. Application for renewal of groundwater withdrawal of up to 0.173 mgd (30-day average) from Well 1 (Docket No. 19940707).

13. *Project Sponsor:* New Enterprise Stone & Lime Co., Inc. Project Facility: Roaring Spring Quarry (Halter Creek 2), Taylor Township, Blair County, Pa. Applications for renewal of consumptive use of up to 0.380 mgd (peak day) and surface water withdrawal of up to 0.288 mgd (peak day) (Docket No. 19940705 and Certificate of Registration No. GF-202204215).

14. *Project Sponsor and Facility:* Pennsylvania General Energy Company,

L.L.C. (Loyalsock Creek), Plunketts Creek Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 2,000 mgd (peak day) (Docket No. 20231213).

15. *Project Sponsor:* The Procter & Gamble Paper Products Company. *Project Facility:* Mehoopany Plant, Washington Township, Wyoming County, Pa. Application for renewal of consumptive use of up to 2,750 mgd (peak day) (Docket No. 19940704).

16. *Project Sponsor and Facility:* Repsol Oil & Gas USA, LLC (Lycoming Creek), McIntyre Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 2,000 mgd (peak day) (Docket No. 20190910).

17. *Project Sponsor and Facility:* Seneca Resources Company, LLC (Marsh Creek), Delmar Township, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.499 mgd (peak day) (Docket No. 20190911).

18. *Project Sponsor and Facility:* Shrewsbury Borough, York County, Pa. Application for renewal of groundwater withdrawal of up to 0.120 mgd (30-day average) from the Woodlyn Well (Docket No. 19920501).

19. *Project Sponsor and Facility:* State College Borough Water Authority, Benner Township, Centre County, Pa. Applications for renewal of groundwater withdrawal (30-day averages) of up to 1.584 mgd from Well 17, 0.576 mgd from Well 18, and 1.512 mgd from Well 19 (Docket No. 19930501).

20. *Project Sponsor and Facility:* Strasburg Lancaster County Borough Authority, Strasburg Township, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.275 mgd (30-day average) from the Fisher Well (Docket No. 19890107). *Service area is located in an Environmental Justice area.*

21. *Project Sponsor:* TableTrust Brands LLC. *Project Facility:* Freebird East, Bethel Township, Lebanon County, Pa. Application for renewal of groundwater withdrawal of up to 0.199 mgd (30-day average) from Well 8 (Docket No. 19990701).

22. *Project Sponsor:* UGI Development Company. *Project Facility:* Hunlock Creek Energy Center (Susquehanna River), Hunlock Township, Luzerne County, Pa. Applications for renewal of surface water withdrawal of up to 55.050 mgd (peak day) and consumptive use of up to 2.396 mgd (peak day) (Docket No. 20090916).

23. *Project Sponsor and Facility:* Williamsburg Municipal Authority, Catharine Township, Blair County, Pa. Application for renewal of groundwater withdrawal of up to 0.180 mgd (30-day

average) from Well 3 (Docket No. 19940702).

24. *Project Sponsor and Facility:* XTO Energy Inc. (West Branch Susquehanna River), Chapman Township, Clinton County, Pa. Application for renewal of surface water withdrawal of up to 2,000 mgd (peak day) (Docket No. 20190912). *Located in an Environmental Justice area.*

Opportunity To Appear and Comment

Interested parties may appear or call into the hearing to offer comments to the Commission on any business listed above required to be the subject of a public hearing. Given the nature of the meeting, the Commission strongly encourages those members of the public wishing to provide oral comments to pre-register with the Commission by emailing Jason Oyler at joyler@srbc.gov before the hearing date. The presiding officer reserves the right to limit oral statements in the interest of time and to control the course of the hearing otherwise. Access to the hearing via telephone will begin at 6:15 p.m. Guidelines for the public hearing are posted on the Commission's website, www.srbc.gov, before the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any business listed above required to be the subject of a public hearing may also be mailed to Mr. Jason Oyler, Secretary to the Commission, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110-1788, or submitted electronically through <https://www.srbc.gov/meeting-comment/default.aspx?type=2&cat=7>. Comments mailed or electronically submitted must be received by the Commission on or before Monday, August 12, 2024, to be considered.

Authority: Pub. L. 91-575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: July 3, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2024-15004 Filed 7-8-24; 8:45 am]

BILLING CODE 7040-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Rescission of Record of Decision and Final Environmental Impact Statement: La Crosse County, Wisconsin

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice to rescind the Record of Decision (ROD) and the Final Environmental Impact Statement (FEIS).

SUMMARY: The FHWA, in cooperation with the Wisconsin Department of Transportation (WisDOT), is issuing this notice to advise the public that we are rescinding the 1998 Record of Decision (ROD) and the Final Environmental Impact Statement (FEIS) that proposed various improvements along north-south corridors in La Crosse County, WI.

FOR FURTHER INFORMATION CONTACT:

Lisa Hemesath, Environmental Protection Specialist, Federal Highway Administration, 525 Junction Road, Suite 8000, Madison, Wisconsin, 53717-2157, Telephone: (608) 829-7503.

Barry Paye, Director, Bureau of Technical Services, Wisconsin Department of Transportation, 4822 Madison Yards Way, 5th Floor, Madison, WI 53705, Telephone: (608) 246-7945.

SUPPLEMENTARY INFORMATION: The FHWA, as the lead Federal agency, in cooperation with the WisDOT, is rescinding the ROD and the FEIS that proposed various improvements along north-south corridors in La Crosse County, WI. The purpose and need of the FEIS were to develop transportation corridors that supported all transportation users, supported economic growth, and met forecasted transportation demand. The Notice of Intent (NOI) to prepare the EIS was published in the **Federal Register** on July 27, 1995. The FEIS was approved on January 7, 1998. The ROD was issued on May 22, 1998. The FHWA has determined, in conjunction with WisDOT, that the ROD and the FEIS for the project shall be rescinded for the following reasons: a lack of support from the public and stakeholders, anticipated development in the corridor has not occurred and forecasted travel demand hasn't been realized.

Any future Federal-aided action within this corridor will comply with environmental review requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321), FHWA environmental regulations (23 CFR part 771) and related authorities, as appropriate. Comments and questions concerning this action should be directed to FHWA or WisDOT at the addresses provided above.

Glenn Fulkerson,

Division Administrator, FHWA Wisconsin Division, Madison, WI.

[FR Doc. 2024-14993 Filed 7-8-24; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA–2024–0012]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from nine individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before August 8, 2024.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2024–0012 using any of the following methods:

- **Federal eRulemaking Portal:** Go to www.regulations.gov/, insert the docket number (FMCSA–2024–0012) in the keyword box and click “Search.” Next, choose the only notice listed, and click on the “Comment” button. Follow the online instructions for submitting comments.

- **Mail:** Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.

- **Hand Delivery:** West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.

- **Fax:** (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, fmcsamedical@dot.gov. Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket,

contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:**I. Public Participation***A. Submitting Comments*

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2024–0012), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA–2024–0012>. Next, sort the results by “Posted (Newer-Older),” choose the only notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number (FMCSA–2024–0012) in the keyword box and click “Search.” Next, choose the only notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to

www.regulations.gov. As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver’s medical certification.

The nine individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, “Qualification of Drivers; Application for Exemptions; National Association of the Deaf,” (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency’s physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency’s physical

qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Carl Afroilan

Carl Afroilan, 48, holds a class C driver's license in Maryland.

Kevin Camper

Kevin Camper, 41, holds a regular driver's license in Indiana.

Anthony Cline

Anthony Cline, 40, holds a class D driver's license in Ohio.

Dwain Coppernoll

Dwain Coppernoll, 67, holds a class C driver's license in Oregon.

Jonathan Hornberger

Jonathan Hornberger, 36, holds a class CA Commercial Driver's License (CDL) in Michigan.

Scott Prewara

Scott Prewara, 50, holds a class A CDL in Minnesota.

Gregory Rosa

Gregory Rosa, 45, holds a class D driver's license in New York.

Barney Toussaint

Barney Toussaint, 39, holds a class AM CDL in Georgia.

Terrell Williams

Terrell Williams, 52, holds a class A CDL in Ohio.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024-15039 Filed 7-8-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2024-0125]

Commercial Driver's License; 3 North LLC; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice, extension of comment period.

SUMMARY: FMCSA extends the comment period for its June 11, 2024, notice requesting public comment on 3 North LLC's application for a 5-year exemption to enable 3 of its commercial driver's license (CDL) holders under the age 21, with the requisite "K" restriction for intrastate-only operations, to drive commercial motor vehicles (CMV) in intrastate operations in a State other than their State of domicile. FMCSA extends the comment period until July 25, 2024, because the application was not available for public review.

DATES: The comment period for the request for information published on June 11, 2024, at 89 FR 49623, is extended. Comments will be accepted on or before July 25, 2024.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2024-0125 by any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- **Mail:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** West Building, Ground Floor, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- **Fax:** (202) 493-2251.

Each submission must include the Agency name and the docket number (FMCSA-2024-0125) for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: If you do not have access to the internet, you may view the docket by visiting Docket Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, including any personal information the commenter provides, to www.regulations.gov, as described in

the system of records notice DOT/ALL-14 FDMS, which can be reviewed at <https://www.transportation.gov/privacy>. The comments are posted without edit and are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Ms. Bernadette Walker, Driver, and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; (202) 385-2415; bernadette.walker@dot.gov. If you have questions about viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2024-0125), indicate the specific section of this document to which the comment applies, and provide a reason for your suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov, enter the docket number "FMCSA-2024-0125" in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, click the "Comment" button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

II. Background

The June 11, 2024, notice (89 FR 49263) requested public comment on 3 North LLC's application for a 5-year exemption to enable 3 of its CDL holders under the age 21, with the requisite "K" restriction for intrastate-only operations, to drive CMVs in intrastate operations in a State other than their State of domicile.

The comment period was set to expire on July 11. FMCSA extends the

comment period until July 25, 2024, because the application was not available for public review. The application was placed in the docket for this notice on June 24, 2024.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–14992 Filed 7–8–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2024–0012]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) summarized below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before September 9, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted at www.regulations.gov to the docket, Docket No. FRA–2024–0012. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number (2130–0008) in any correspondence submitted. FRA will summarize comments received in a subsequent 30-day notice.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: arlette.mussington@dot.gov or telephone: (571) 609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: joanne.swafford@dot.gov or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60 days' notice to the public to allow comment on information collection activities before seeking OMB

approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, comments received will advance three objectives: (1) reduce reporting burdens; (2) organize information collection requirements in a “user-friendly” format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Inspection Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment (Power Brakes).

OMB Control Number: 2130–0008.

Abstract: Title 49 CFR part 232

prescribes Federal safety standards for freight and other non-passenger train brake systems and equipment. Part 232 includes recordkeeping and information reporting requirements including the following:

General (subpart A)—procedures for special approvals of alternative standards or test procedures and waivers, and procedures related to the movement of equipment with defective brakes.

General requirements (subpart B)—generally applicable system requirements for the operation of brake systems on complete trains, including braking systems, locomotive brakes, dynamic braking, train handling and securement.

Inspection and testing requirements (subpart C)—various airbrake test requirements for specific train operating

scenarios, including initial terminal tests, intermediate inspections, continuity tests, and extended haul trains. This subpart also has specific rules regarding the use of yard air for conducting the above tests in lieu of locomotives and the use of independent locomotives in double-heading and helper service.

Periodic maintenance and testing requirements (subpart D)—yearly and other periodic testing of individual equipment. This subpart also specifies the equipment and procedures necessary to modify the instructions used to perform these tests.

End-of-train (EOT) devices (subpart E)—design and performance standards of both one-way and two-way EOT devices used on all trains with air brakes. This section also includes the inspection and testing requirements for EOT devices.

Introduction of new brake system technology (subpart F)—approval procedures for the introduction of new technologies not already covered by existing regulations, and requirements for the development of a pre-revenue service acceptance testing plan.

Electronically controlled pneumatic (ECP) braking systems (subpart G)—alternate standards for the operation and maintenance of ECP brake systems, particularly where the ECP system is not harmonious with previous standards. This includes interoperability, training, inspection and testing, movement of defective equipment, and periodic maintenance.

Tourist, scenic, historic, and excursion operations (T&H) braking systems (subpart H)—regulations that apply specifically to T&H railroads. Those regulations are the same as existed in 2001, as stated in current 49 CFR 232.1(c).

Overall, the information collection requirements of part 232 serve two important safety purposes. First, the regulations allow FRA to monitor compliance with braking system safety regulations. Second, FRA refers to records regularly maintained under part 232 to assess the effectiveness of the regulations and identify opportunities for improvement.

In this 60-day notice, FRA made multiple adjustments that decreased the previously approved burden hours from 528,432 to 324,638 hours. The decrease in burden is the result of the changes described in the following sections discussed below:

- Under § 232.17, Special approval procedure, FRA determined that the estimated paperwork burden to develop the alternative standard or test plan is already included under § 232.505, Pre-

revenue service acceptance plan. The estimated paperwork burden under this section is reduced by 244 hours. Additionally, FRA anticipates receiving zero statements of interest and has determined that the burden previously reported for public comments is excluded from the definition of information covered by the PRA under 5 CFR 1320.3(h)(4).

• The previously reported burdens under § 232.103 related to job briefings and § 232.209 related to “roll-by” inspections are not considered information collections under the PRA because the agency is not collecting any information or requiring a third party to collect any information or keep any records. Therefore, the 328 burden

hours associated with those regulatory requirements have been removed.

• Under §§ 232.107, Air source requirements and cold weather operations; 232.109, Dynamic brake requirements; 232.203, Training requirements; 232.207, Class IA brake tests—1,000-mile inspection; 232.213, Extended haul trains; and 232.303, General requirements, FRA made burden estimate adjustments that more accurately reflect the number of responses and estimated average time required by each section, reducing the burden by 6,523 hours.

• Under § 232.505, Pre-revenue service acceptance testing plans, FRA concluded that the previously reported burden hours for the design plan are already included in the 160 hours

reported for each test plan. Accordingly, burden hours have been reduced by 137.29 hours.

Additionally, FRA made rounding adjustments that reduced the burden hours by 1,658.76 hours. Overall, total adjustments reduced the total burden by 203,794 hours.

Type of Request: Extension without change (with changes in estimates) of a currently approved information collection.

Affected Public: Railroads, Association of American Railroads (AAR), and manufacturers.

Form(s): N/A.

Respondent Universe: 784 Railroads.

Frequency of Submission: On occasion.

Reported Burden:

CFR part 232 section	Respondent universe	Annual responses	Avg. time per response (hours)	Total annual burden hours (C)	Total cost equivalent U.S.D
		(A)	(B)	(A * B = C)	(C * wage rate ¹)
232.3—Applicability	784 railroads	8	.....	1.36	\$116.86
(d)(3)—Identification of cars not owned by RR .....	.....	8	0.17	1.36	116.86
232.7—Waivers	784 railroads	2	.....	320.00	27,497.60
(a)—Waivers .....	.....	2	160	320.00	27,497.60
232.15—Movement of defective equipment	784 railroads	153,400	.....	6,642.80	570,815.80
(a)(11)(ii)—Written Notification .....	.....	25,000	0.05	1,250.00	107,412.50
(b)—Tagging of defective equipment .....	.....	128,400	0.042	5,392.80	463,403.30
232.17—Special approval procedure	784 railroads	0.67	.....	0.67	57.57
(b) through (d)—Submission of petition for special approval of alternative standard or test procedure and pre-revenue service acceptance plan.	.....	0.67	1	0.67	57.57
232.103—General requirements for all train brake systems.	784 railroads	70,014	.....	11,958.50	1,027,593.91
—Requirement for legible decal/stencil/sticker on all cars.	.....	70,000	0.17	11,900.00	1,022,567.00
(n)—Securement of unattended equipment—Unattended equipment plans (new plans).	.....	1	10	10.00	859.30
—Notification to FRA when RR develops and has plan in place or modifies existing plan.	.....	1	0.50	0.50	42.97
—(n)(10) Records of inspection following non-railroad emergency responder on equipment.	.....	12	4	48.00	4,124.64
232.105—General requirements for locomotives—Inspection records.	The burden for this requirement is included under OMB control number 2130–0004 under 49 CFR 229.23.				
232.107—Air source requirements and cold weather operations.	5 new railroads	1,156	.....	335.50	28,829.52
(a)—Monitoring plans for yard air sources (new) .....	.....	1	40	40.00	3,437.20
—Updates/revisions	50 existing plans	5	20	100.00	8,593.00
—Recordkeeping	50 existing plans	1,150	0.17	195.50	16,799.32
232.109—Dynamic brake requirements	784 railroads	1,668,748	.....	116,474.22	10,008,630.07
(a)—Brake status records .....	.....	1,656,000	0.07	115,920.00	9,961,005.60
(c)—Inoperative dynamic brakes, tagging and records	30,000 locomotives	6,358	0.07	445.06	38,244.01
(d)—Tagging inoperative dynamic breaks	30,000 locomotives	6,358	0.008	50.86	4,370.74
(e)—Deactivated dynamic brakes markings	1000 locomotives	10	0.08	0.80	68.74
(J)—Operating rules .....	.....	5	4	20.00	1,718.60
—Amended/revised operating rules .....	.....	15	1	15.00	1,288.95
—Request to increase mph overspeed restriction .....	.....	1	20.5	20.50	1,761.57
(k)—Knowledge, skill ability training plan .....	.....	1	2	2.00	171.86
232.111—Train handling information	784 railroads	2,112,105	.....	171,160	14,707,778.80
(a)—Written procedures for train handling .....	.....	5	40	200.00	17,186.00
—Amendments/revisions .....	.....	100	20	2,000.00	171,860.00
—Provide crew with report .....	.....	2,112,000	0.08	168,960.00	14,518,732.80
232.203—Training requirements	784 railroads	50,587	.....	6,889.15	591,984.66
(a)—Training programs .....	.....	5	100	500.00	42,965.00
—Periodic assessment of training program .....	.....	784	1	784.00	67,369.12
—Amendments .....	.....	236	8	1,888.00	162,235.84
(e)—Training records and notifications .....	.....	24,781	0.13	3,221.53	276,826.07
—Notifications .....	.....	24,781	0.02	495.62	42,588.63
232.205—Class I brake test—initial terminal inspection	784 railroads	383,850	.....	4,686.08	402,674.85
(c)(1)(ii)(B)—Operating rules for airflow compliance .....	.....	10	8	80.00	6,874.40
(e)—Brake test notice records .....	.....	383,840	0.012	4,606.08	395,800.45

CFR part 232 section	Respondent universe	Annual responses	Avg. time per response (hours)	Total annual burden hours (C)	Total cost equivalent U.S.D
		(A)	(B)	(A * B = C)	(C * wage rate ¹)
(c) (1)(iii)—Form 49A notation/certification of last date of air flow method (AFM) indicator calibration (formally under § 229.29(b).	The estimated paperwork burden for this requirement is included under OMB Control Number 2130–0004.				
232.207—Class IA brake tests—1000-mile inspection	784 railroads	53	.....	9.84	845.55
(c)—Designated list of inspection locations .....	.....	1	1	1.00	85.93
(c)(2)—Notice of change to inspection locations. ....	.....	52	0.17	8.84	759.62
232.213—Extended haul trains	83,000 long-haul trains	208	.....	43.68	3,753.42
(a)—Written designation in writing to FRA .....	.....	104	0.25	26.00	2,234.18
(a)(8)—Notice of change of location of brake test	7 railroads	104	0.17	17.68	1,519.24
232.219—Double-heading and helper service	2 railroads	100	.....	8.00	687.44
(c)(4)—Records of device testing .....	.....	100	0.08	8.00	687.44
232.303—General requirements—shop or repair track	1,633,792 freight cars	37,600	.....	1,408.00	120,989.44
(d)(1)—Tagging of moved equipment .....	.....	5,600	0.08	448.00	38,496.64
(f)—Last repair track brake test or single car air brake test marking. ....	.....	32,000	0.03	960.00	82,492.80
232.307—Modification of brake test procedures	AAR/railroads	2	.....	20.50	1,761.57
(a)—Request to modify brake test procedures .....	.....	1	20	20.00	1,718.60
(a)(4)—Affirmation statement and copies served to designated representatives..	.....	1	0.50	0.50	42.97
232.309—Equipment and devices used to perform single car air brake tests.	640 shops	5000	.....	150.00	12,889.50
(d)—Labeling/tagging of test devices .....	.....	5000	0.03	150.00	12,889.50
232.403—Design standards for one-way end-of-train devices.	245 railroads	12	.....	0.96	82.49
(e)—Requesting unique code .....	.....	12	0.08	0.96	82.49
232.409—Inspection and testing of end-of-train-devices	784 railroads	464,501	.....	4,102.00	352,484.86
(c)—Two-way end-of-train testing notification record ..	.....	447,500	0.008	3,580.00	307,629.40
(d) through (e)—Telemetry/air pressure equipment testing record. ....	.....	17,000	0.03	510.00	43,824.30
(f)(2)—Annual reports to FRA	1 manufacturer	1	12	12.00	1,031.16
232.503—Process to introduce new brake system technology.	784 railroads	2	.....	4.00	343.72
(a)—Special approval—approval for non-standard brake technology letter for approval. ....	.....	1	1	1.00	85.93
(b)—Pre-revenue service demonstration .....	.....	1	3	3.00	257.79
232.505—Pre-revenue service acceptance testing plan	784 railroads	3.01	.....	182.71	15,700.27
(a)—Submission of testing plan .....	.....	0.67	160	107.20	9,211.70
—Revision to testing plan .....	.....	0.67	40	26.80	2,302.92
—Report to FRA .....	.....	0.67	13	8.71	748.45
—(f) Testing records for brake system technology previously used in revenue service in United States. ....	.....	1	40	40.00	3,437.20
232.717—Freight and passenger train car brakes	40 railroads	40	.....	240.00	20,623.20
(c)—Written maintenance plan .....	.....	40	6	240.00	20,623.20
Total ²	784 railroads; 30,000 locomotives; 1 manufacturer.	4,947,392 responses	.....	324,638 hours	\$27,896,141

¹ The dollar equivalent cost throughout this table is derived from the 2022 Surface Transportation Board Full Year Wage A&B data series using employee group 200 (Professional & Administrative) hourly wage rate of \$49.10. The total burden wage rate (straight time plus 75%) used in the table is \$85.93 (\$49.10 × 1.75 = \$85.93).

² Total may not add up due to rounding.

Total Estimated Annual Responses:
4,947,392.

Total Estimated Annual Burden:
324,638 hours.

Total Estimated Annual Burden Hour
Dollar Cost Equivalent: \$27,896,141.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,
Deputy Chief Counsel.

[FR Doc. 2024–15032 Filed 7–8–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

United States Mint

Establishment of New Prices for United States Mint Numismatic Silver Products

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing new and updated pricing for its numismatic silver products in accordance with the table below, effective July 9, 2024:

FOR FURTHER INFORMATION CONTACT:

Derrick Griffin, 202–354–7579 or Customer Service; United States Mint;

801 9th Street NW; Washington, DC 20220; or call 1–800–872–6468.

Product	New retail price
American Eagle 1 oz Silver Proof Coin (W)	\$95
American Eagle 1 oz Silver Proof Coin (S)	95
American Eagle 1 oz Silver Uncirculated Coin (W)	91
2019 American Eagle 1 oz Silver Enhanced Reverse Proof Coin (S)	105
2019 American Liberty 2.5 oz Silver Medal	242.50
American Liberty Silver Medal™	97
America the Beautiful 5oz Silver Uncirculated (all skus)	455
United States Mint Silver Proof Set®	150
United States Mint Congratulations Set	97
United States Mint Birth Set	105
American Women Quarters Silver Proof Set™	95
Morgan Dollar—Silver Proof	95
Morgan Dollar—Silver Uncirculated	91
Peace Dollar—Silver Proof	95
Peace Dollar—Silver Uncirculated	91

Product	New retail price
Morgan and Peace Two-Coin Silver Reverse Proof Set	215
2024 Liberty/Britannia Silver Medal	104
2024 Flowing Hair Silver Medal—Uncirculated	104
Armed Forces 2.5 oz Silver Medal (all skus)	225
Armed Forces 1 oz Silver Medal (all skus)	90
1 oz Presidential Silver Medal (all skus)	90

Authority: 31 U.S.C. 5111, 5112, 5132, 9701.

Eric Anderson,
Executive Secretary, United States Mint.
[FR Doc. 2024–14957 Filed 7–8–24; 8:45 am]
BILLING CODE 4810–37–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0717]

Agency Information Collection Activity Under OMB Review: Child Care Provider Information-For the Child Care Subsidy Program

AGENCY: Human Resources and Administration/Operations, Security, and Preparedness (HRA/OSP), Department of Veterans Affairs.
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Human Resources and Administration/Operations, Security, and Preparedness (HRA/OSP), is announcing an

opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Comments must be received on or before August 31, 2024.

ADDRESSES: Comments must be submitted through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:
Program-Specific information:
Brittany Ricks, 585–285–5191,
Brittany.Ricks@va.gov.

VA PRA information: Maribel Aponte, 202–461–8900, vacopaperworkreduact@va.gov.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VA Child Care Subsidy (CCSP) invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of CCSP functions, including whether the information will have practical utility; (2) the accuracy of CCSP estimate of the burden of the proposed collection of information; (3)

ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Child Care Provider Information-For the Child Care Subsidy Program.

OMB Control Number: 2900–0717.
<https://www.reginfo.gov/public/do/PRASearch> (Once at this link, you can enter the OMB Control Number to find the historical versions of this Information Collection).

Type of Review: Extension of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA) needs to collect information from child care providers to determine employee eligibility to participate in the VA Child Care Subsidy Program.

Affected Public: Individuals and households.

Estimated Annual Burden: 937 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,500.

Authority: 44 U.S.C. 3501 *et seq.*

Maribel Aponte,
VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–14947 Filed 7–8–24; 8:45 am]
BILLING CODE 8320–01–P



FEDERAL REGISTER

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Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, et al.

Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions; Final Rule

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1, 31, and 301**

[TD 10000]

RIN 1545–BP71

Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations.

SUMMARY: This document contains final regulations regarding information reporting and the determination of amount realized and basis for certain digital asset sales and exchanges. The final regulations require brokers to file information returns and furnish payee statements reporting gross proceeds and adjusted basis on dispositions of digital assets effected for customers in certain sale or exchange transactions. These final regulations also require real estate reporting persons to file information returns and furnish payee statements with respect to real estate purchasers who use digital assets to acquire real estate.

DATES:

Effective date: These regulations are effective on September 9, 2024.

Applicability dates: For dates of applicability, see §§ 1.1001–7(c); 1.1012–1(h)(5); 1.1012–1(j)(6); 1.6045–1(q); 1.6045–4(s); 1.6045B–1(j); 1.6050W–1(j); 31.3406(b)(3)–2(c); 31.3406(g)–1(f); 31.3406(g)–2(h); 301.6721–1(j); 301.6722–1(g).

FOR FURTHER INFORMATION CONTACT:

Concerning the final regulations under sections 1001 and 1012, Alexa Dubert or Kyle Walker of the Office of the Associate Chief Counsel (Income Tax and Accounting) at (202) 317–4718; concerning the international sections of the final regulations under sections 3406 and 6045, John Sweeney or Alan Williams of the Office of the Associate Chief Counsel (International) at (202) 317–6933; and concerning the remainder of the final regulations under sections 3406, 6045, 6045A, 6045B, 6050W, 6721, and 6722, Roseann Cutrone of the Office of the Associate Chief Counsel (Procedure and Administration) at (202) 317–5436 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Background**

This document contains amendments to the Regulations on Income Taxes (26

CFR part 1), the Regulations on Employment Tax and Collection of Income Tax at the Source (26 CFR part 31), and the Regulations on Procedure and Administration (26 CFR part 301) pursuant to amendments made to the Internal Revenue Code (Code) by section 80603 of the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1339 (2021) (Infrastructure Act) relating to information reporting by brokers under section 6045 of the Code. Specifically, the Infrastructure Act clarified the rules regarding how certain digital asset transactions should be reported by brokers, expanded the categories of assets for which basis reporting is required to include all digital assets, and provided a definition for the term digital assets. Additionally, the Infrastructure Act clarified that transfer statement reporting under section 6045A(a) of the Code applies to covered securities that are digital assets and added a new information reporting provision under section 6045A(d) to require brokers to report on transfers of digital assets that are covered securities, provided the transfer is not a sale and is not to an account maintained by a person, as defined in section 7701(a)(1) of the Code, that the broker knows or has reason to know is also a broker. Finally, the Infrastructure Act provided that these amendments apply to returns required to be filed, and statements required to be furnished, after December 31, 2023, and provided a rule of construction stating that these statutory amendments shall not be construed to create any inference for any period prior to the effective date of the amendments with respect to whether any person is a broker under section 6045(c)(1) or whether any digital asset is property which is a specified security under section 6045(g)(3)(B).

On August 29, 2023, the Treasury Department and the IRS published in the **Federal Register** (88 FR 59576) proposed regulations (REG–122793–19) (proposed regulations) relating to information reporting under section 6045 by brokers, including real estate reporting persons and certain third party settlement organizations under section 6050W of the Code. Additionally, the proposed regulations included specific rules under section 1001 of the Code for determining the amount realized in a sale, exchange, or other disposition of digital assets and under section 1012 of the Code for calculating the basis of digital assets. The proposed regulations stated that written or electronic comments provided in response to the proposed

regulations must be received by October 30, 2023.

The Treasury Department and the IRS received over 44,000 written comments in response to the proposed regulations. Although <https://www.regulations.gov> indicated that over 125,000 comments were received, this larger number reflects the number of “submissions” that each submitted comment indicated were included in the posted comment, whether or not the comment actually included such separate submissions. All posted comments were considered and are available at <https://www.regulations.gov> or upon request. A public hearing was held on November 13, 2023.

Several comments requested an extension of the time to file comments in response to the proposed regulations. These requests for extension ranged from a few weeks to several years, but most comments requested a 60-day extension. In response to these comments, the due date for the comments was extended until November 13, 2023. The comment period was not extended further for several reasons. First, information reporting rules are necessary to make digital asset investors aware of their taxable transactions and to make those transactions more transparent to the IRS to reduce the tax gap. It is, therefore, a priority that the publication of these regulations is not delayed more than is necessary. Second, although the Infrastructure Act amended section 6045 in November 2021 to broadly apply the information reporting rules for digital asset transactions to a wide variety of brokers, the broker reporting regulations for digital assets were added to the Treasury Priority Guidance Plan in late 2019. Brokers, therefore, have long been on notice that there would be proposed regulations on which to comment. Third, as discussed in Part VI. of this *Summary of Comments and Explanation of Revisions*, the Treasury Department and the IRS understand that brokers need time after these final regulations are published to develop systems to comply with the final reporting requirements. Without further delaying the applicability date of these much-needed regulations, therefore, extending the comment period would necessarily reduce the time brokers would have to develop these systems. Fourth, a 60-day comment period is not inherently short or inadequate. Executive Order (E.O.) 12866 provides that generally a comment period should be no less than 60 days, and courts have uniformly upheld comment periods of even shorter comment periods. *See, e.g., Connecticut Light & Power Co. v. NRC,*

673 F.2d 525, 534 (D.C. Cir. 1982), *cert. denied*, 459 U.S. 835, 103 S.Ct. 79, 74 L.Ed.2d 76 (1982) (denying petitioner's claim that a 30 day comment period was unreasonable, notwithstanding petitioner's complaint that the rule was a novel proposition); *North American Van Lines v. ICC*, 666 F.2d 1087, 1092 (7th Cir. 1981) (claim that 45 day comment period was insufficient rejected as "without merit"). Indeed, over 44,000 comments were received before the conclusion of the comment period ending on November 13, 2023, which demonstrates that this comment period was sufficient for interested parties to submit comments. Fifth, it has been a longstanding policy of the Treasury Department and the IRS to consider comments submitted after the published due date, provided consideration of those comments does not delay the processing of the final regulation. IRS Policy Statement 1–31, Internal Revenue Manual 1.2.1.15.4(6) (September 3, 1987). In fact, all comments received through the requested 60-day extension period were considered in promulgating these final regulations. Moreover, the Treasury Department and the IRS accepted late comments through noon eastern time on April 5, 2024.

The Summary of Comments and Explanation of Revisions of the final regulations summarizes the provisions of the proposed regulations, which are explained in greater detail in the preamble to the proposed regulations. After considering the comments to the proposed regulations, the proposed regulations are adopted as amended by this Treasury decision in response to such comments as described in the *Summary of Comments and Explanation Revisions*.

These final regulations concern Federal tax laws under the Internal Revenue Code only. No interference is intended with respect to any other legal regime, including the Federal securities laws and the Commodity Exchange Act, which are outside the scope of these regulations.

Summary of Comments and Explanation of Revisions

I. Final § 1.6045–1

A. Definition of Digital Assets Subject to Reporting

The proposed regulations required reporting under section 6045 for certain dispositions of digital assets that are made in exchange for cash, different digital assets, stored-value cards, broker services, or property subject to reporting under existing section 6045 regulations or any other property in a payment

transaction processed by a digital asset payment processor (referred to in these final regulations as a processor of digital asset payments or PDAP). The proposed regulations defined a digital asset as a digital representation of value that is recorded on a cryptographically secured distributed ledger (or any similar technology), without regard to whether each individual transaction involving that digital asset is actually recorded on the cryptographically secured distributed ledger. Additionally, the proposed regulations provided that a digital asset does not include cash in digital form.

While some comments expressed support for the definition of digital asset in the proposed regulations, other comments raised concerns that the definition of digital asset goes beyond the statutory definition found in amended section 6045. For example, one comment recommended applying the definition only to assets held for investment and excluding any assets that are used for other functions, which include, in their view, nonfungible tokens (NFTs), stablecoins, tokenized real estate, and tokenized commodities. Another comment recommended narrowing the definition of digital asset to apply only to blockchain "native" digital assets and exempting all NFTs and other tokenized versions of traditional asset classes, such as tokenized securities, and other digital assets that don't function as a medium of exchange, unit of account, or store of value. Another comment recommended that the definition of digital asset distinguish between digital representations of what the comment referred to as "hard assets," such as gold, where the digital asset is merely a proxy for the underlying asset versus digital assets that are not backed by hard assets. Another comment recommended that the definition of digital asset not include tokenized assets, including financial instruments that have been tokenized. The final regulations do not adopt these comments. As discussed more fully in Parts I.A.1. and A.2. of this *Summary of Comments and Explanation of Revisions*, neither the statutory language nor the legislative history to the Infrastructure Act suggest Congress intended such a narrow interpretation of the term.

The Infrastructure Act made changes to the third party information reporting rules under section 6045. Third party information reporting generally contributes to lowering the income tax gap, which is the difference between taxes legally owed and taxes actually paid. GAO, *Tax Gap: Multiple Strategies Are Needed to Reduce Noncompliance*,

GAO–19–558T at 6 (Washington, DC: May 9, 2019). It is anticipated that broker information reporting on digital asset transactions will lead to higher levels of taxpayer compliance because brokers will provide the information necessary for taxpayers to prepare their Federal income tax returns and reduce the number of inadvertent errors or intentional omissions or misstatements shown on those returns. Because digital assets can easily be held and transferred, including to offshore destinations, directly by a taxpayer rather than by an intermediary, digital asset transactions raise tax compliance concerns that are specific to digital assets in addition to the more general tax compliance concerns relevant to securities, commodities, and other assets that are reportable under section 6045 and to cash payments reportable under other reporting provisions. The Treasury Department and the IRS have consequently concluded that the definition of digital assets in section 6045(g)(3)(D) provides the appropriate scope for digital assets subject to broker reporting. To the extent sales of digital assets including NFTs, tokenized securities, and other digital assets that may not function as a medium of exchange, unit of account, or store of value, give rise to taxable gains and losses, these assets should be included in the definition of digital assets. *See*, however, Part I.D.3. of this *Summary of Comments and Explanation of Revisions* for a description of an optional reporting rule for many NFTs that would eliminate reporting on those NFTs when certain conditions are met, and Part I.A.4.a. of this *Summary of Comments and Explanation of Revisions* for a description of a special rule providing that assets that are both securities and digital assets are reportable as securities rather than as digital assets when specified conditions are met.

Some comments asserted that the statutory definition of digital assets is or should be limited to assets that are financial instruments. These comments are discussed in Part I.A.2. of this *Summary of Comments and Explanation of Revisions*.

Other comments raised a concern that the definition of digital assets is ambiguous and recommended adding examples that clarify the types of property that are and are not digital assets. For reasons discussed more fully in Parts I.A.1., A.2., and A.3. of this *Summary of Comments and Explanation of Revisions*, the final regulations include several additional examples that illustrate and further clarify certain types of digital assets that

are included in the definition, such as qualifying stablecoins, specified nonfungible tokens (specified NFTs), and other fungible digital assets.

One comment suggested that the term cryptographically secured distributed ledger be defined in the final regulations as a type of data storage and transmission file which uses cryptography to allow for a decentralized system of verifying transactions. This comment also stated that the definition should state that the stored information is an immutable database and includes an embedded system of operation, and that a blockchain is a type of distributed ledger. The final regulations do not adopt this recommendation because clarification of the term is not necessary and because the recommended changes are potentially unduly restrictive to the extent they operate to restrict future broker reporting obligations should advancements be made in how distributed ledgers are cryptographically secured.

One comment suggested that the proposed definition of a digital asset is overly broad because it includes transactions recorded in the broker's books and records (commonly referred to as "off-chain" transactions) and not directly on a distributed ledger. Another comment specifically supported the decision to not limit the definition to only those digital representations for which each transaction is actually recorded or secured on a cryptographically secured distributed ledger. The Treasury Department and the IRS have determined that the definition of digital asset is not overly broad in this regard because eliminating digital assets that are traded in off-chain transactions from the definition would fail to provide information reporting on the significant amount of trading that occurs off-chain on the internal ledgers of custodial digital asset trading platforms. Moreover, since the mechanics of how an asset sale is recorded does not impact whether there has been a taxable disposition of that asset, those mechanics should not impact whether the underlying asset is or is not a digital asset.

A comment suggested that the definition of a digital asset should eliminate the phrase "or any similar technology" because the scope of that phrase is unclear and could negatively impact future technology improvements, such as privacy-preserving technology, cryptography, distributed database systems, distributed network systems, or other evolving technology. Another comment requested that the definition of any

similar technology be limited to instances in which the IRS identifies such future similar technologies in published guidance. The final regulations do not adopt this comment. Using the phrase "any similar technology" is consistent with the Infrastructure Act's use of the same term in its definition of digital assets in section 6045(g)(3)(D). Further, including any similar technology along with cryptographically secured ledgers is necessary to ensure that brokers continue to report on transactions involving these assets without regard to advancements in or changes to the techniques, methods, and technology, on which these assets are based. The Treasury Department and the IRS are not currently aware of any existing technology that would fit within this "or any similar technology" standard, but if brokers or other interested parties identify new technological developments and are uncertain whether they fit within the definition, they can make the Treasury Department and the IRS aware of the new technology and request guidance at that time.

1. Stablecoins

As explained in the preamble to the proposed regulations, the definition of digital assets was intended to apply to all types of digital assets, including so-called stablecoins that are designed to have a stable value relative to another asset or assets. The preamble to the proposed regulations noted that such stablecoins can take multiple forms, may be backed by several different types of assets that are not limited to currencies, may not be fully collateralized or supported fully by reserves by the underlying asset, do not necessarily have a constant value, are frequently used in connection with transactions involving other types of digital assets, and are held and transferred in the same manner as other digital assets. In addition to fiat currency, other assets to which so-called stablecoins can be pegged include commodities or other financial instruments (including other digital assets). No comments were received that specifically advocated for the exclusion of a so-called stablecoin that has a fixed exchange rate with (that is, is pegged to) a commodity, another financial instrument, or any other asset other than a specific convertible currency issued by a government or a central bank (including the U.S. dollar) (sometimes referred to in this preamble as fiat currency). The Treasury Department and the IRS have determined that it would be inappropriate to exclude

stablecoins that are pegged to such assets from the definition of digital assets. Accordingly, this preamble uses the term stablecoin to refer only to the subset of so-called stablecoins referred to in the proposed regulations that are pegged to a fiat currency.

Numerous comments received specifically advocated for the exclusion from the definition of digital assets stablecoins that are pegged to a fiat currency. Numerous comments stated that failure to exclude stablecoins from the definition of digital assets would hinder the adoption of these stablecoins in the marketplace, deter their integration into commercial payment systems, and undermine Congressional efforts to establish a regulatory framework for stablecoins that can be used to make payments. Additional comments raised concerns about privacy, drew an analogy to the exemption in the existing regulations for reporting on shares of money market funds, or recommended that reporting on stablecoins be deferred until after the substantive tax treatment of stablecoins is clarified with guidance issued by the Treasury Department and the IRS or until a legislative framework is established by Congress. Several other comments recommended that reporting on stablecoins be required, noting that stablecoins can be volatile in value and regularly vary from a one-to-one parity with the fiat currency they are pegged to, and therefore may give rise to gain or loss on disposition.

After consideration of the comments, the final regulations do not exclude stablecoins from the definition of digital assets. Stablecoins unambiguously fall within the statutory definition of digital assets as they are digital representations of the value of fiat currency that are recorded on cryptographically secured distributed ledgers. Moreover, because stablecoins are integral to the digital asset ecosystem, excluding stablecoins from the definition of digital assets would eliminate a source of information about digital asset transactions that the IRS can use in order to ensure compliance with taxpayers' reporting obligations.

The Treasury Department and the IRS are aware that legislation has been proposed that would regulate the issuance and terms of stablecoins. If legislation is enacted regulating stablecoins, the Treasury Department and the IRS intend to take that legislation into account in considering whether to revise the rules for reporting on stablecoins provided in these final regulations.

Notwithstanding that the final regulations include stablecoins in the

definition of digital assets, the Secretary has broad authority under section 6045 to determine the extent of reporting required by brokers on transactions involving digital assets. In response to the request for comments in the preamble to the proposed regulations on whether stablecoins, or other coins whose value is pegged to a specified asset, should be excluded from reporting under the final regulations, numerous comments largely focused on stablecoins, rather than coins that track a commodity price or the price of another digital asset. Many of these comments requested that sales of stablecoins be exempted from broker reporting in whole or in part because reporting on all transactions involving stablecoins would result in a very large number of reports on transactions involving little to no gain or loss, on the grounds that these reports would be burdensome for brokers to provide, potentially confusing to taxpayers and of minimal utility to the IRS. These comments asserted that most transactions involved little or no gain or loss because, in their view, stablecoins closely track the value of the fiat currency to which they are pegged. Some comments recommended that certain types of stablecoin transactions be reportable, including requiring reporting of dispositions of stablecoins for cash or where there is active trading in the stablecoin that is intended to give rise to gain (or loss).

The Treasury Department and the IRS agree that transaction-by-transaction reporting for stablecoins would result in a high volume of reports. Indeed, according to a report by Chainalysis on the “Geography of Cryptocurrency” analyzing public blockchain transactions (commonly referred to as “on-chain” transactions), stablecoins are the most widely used type of digital asset, making up more than half of all on-chain transactions to or from centralized services between July 2022 and March 2023. Chainalysis, *The 2023 Geography of Cryptocurrency Report*, p. 14 (October 2023). Given the popularity of stablecoins and the number of stablecoin sales that are unlikely to reflect significant gains or losses, the Treasury Department and the IRS have determined that it is appropriate to provide an alternative reporting method for certain stablecoin transactions to alleviate unnecessary and burdensome reporting. Accordingly, the final regulations have added a new optional alternative reporting method for sales of certain stablecoins to allow for aggregate reporting instead of transactional reporting, with a *de minimis* annual

threshold below which no reporting is required. See Part I.D.2. of this *Summary of Comments and Explanation of Revisions*. Consistent with the proposed regulations, brokers that do not use this alternative reporting method must report sales of stablecoins under the same rules as for other digital assets. See Part I.D.2. of this *Summary of Comments and Explanation of Revisions* for the discussion of alternative reporting rules for certain stablecoins.

2. Nonfungible Tokens

As with stablecoins, the definition of digital assets in the proposed regulations includes NFTs without regard to the nature of the underlying asset, if any, referenced by the NFT. Although some comments expressed agreement that the definition of digital asset in the statute is broad enough to include all NFTs, other comments raised concerns that the Secretary did not have the authority to include NFTs in broker reporting. That is, the comments argued that while NFTs have value, they do not constitute “representations of value” as required by the statutory definition in section 6045(g)(3)(D). Classifying an NFT as a “representation of value” merely because it has value, these comments asserted, would fail to give effect to the word “representation” in the statute. As support for this view, one comment cited to Senator Portman’s floor colloquy reference to the intended application of the reporting rule to “cryptocurrency.” 167 Cong. Rec. S6095–6 (daily ed. August 9, 2021). Ultimately, these comments recommended excluding sales of NFTs from the definition of digital assets. The final regulations do not adopt these comments. Although NFTs may reference assets with value, this does not prevent them from also “representing value.” Moreover, that interpretation would lead to a result that would contravene the statutory changes to the broker reporting rules by the Infrastructure Act. Excluding all NFTs from the definition of digital assets merely because NFTs may reference assets with value rather than “represent value” would result in the exclusion of NFTs that reference traditional financial assets. These assets have been subject to reporting under section 6045 for nearly 40 years, and there is no reason to exclude them from reporting now based only on the circumstance of their trades through NFTs, rather than through other traditional means.

Numerous comments asserted that the statutory reference to any “representation of value” should limit

the definition of digital assets to only those digital assets that reference financial instruments or otherwise could be used to deliver value (such as a method of payment). Numerous comments expressed that many NFTs, such as, digital art and collectibles, are unique digital assets that are bought and sold for personal enjoyment rather than financial gain and therefore should not be subject to reporting. Similarly, other comments raised the series-qualifier canon of statutory construction, which provides that when a statute contains a list of closely related, parallel, or overlapping terms followed by a modifier, that modifier should be applied to all the terms in the list. Therefore, according to the comments, because “any digital asset” is included in the section 6045(g)(3)(B) list of assets defining specified security and because that list concludes with “any other financial instrument,” these comments argue that the definition of “digital asset” must be limited to assets that are, or are akin to, “financial instruments.” As additional support for this suggestion, one comment cited the rule of last antecedent, which is another canon of statutory construction and provides that a limiting clause or phrase should ordinarily be read as modifying only the noun or phrase that it immediately follows. That is, because the “other financial instrument” clause directly follows “any digital asset” in the list, the definition of any digital asset must be limited to only those digital assets that constitute financial instruments.

The final regulations do not adopt these comments. The plain language of the digital asset definition in section 6045(g)(3)(D) reflects only two specific limitations on the definition: “[e]xcept as otherwise provided by the Secretary” and “recorded on a cryptographically secured distributed ledger or similar technology as specified by the Secretary.” The legislative history to the Infrastructure Act does not support the conclusion that Congress intended the “representation of value” phrase to limit the definition of digital assets to only those digital assets that are financial instruments. To the contrary, a report by the Joint Committee on Taxation published in the *Congressional Record* prior to the enactment of the Infrastructure Act cited to and relied on the Notice 2014–21, 2014–16 I.R.B. 938 (April 14, 2014) definition of virtual currency, which first used the phrase “representation of value.” 167 Cong. Rec. S5702, 5703 (daily ed. August 3, 2021) (Joint Committee on Taxation, Technical Explanation of Section 80603

of the Infrastructure Act). That virtual currency definition specifically limited the “representation of value” phrase to those assets that function “as a medium of exchange, unit of account, and/or store of value.” This limitation would not have been necessary had the “representation of value” phrase been limited to assets that function as financial instruments. Moreover, Congress’ use of the term “digital asset” instead of “digital currency” also supports the broader interpretation of the term.

The final regulations also do not adopt the interpretation of the referenced canons of statutory construction presented by the comments because those canons should not be used to limit the definition of digital assets in a statute that includes an explicit and unambiguous definition of that term. Moreover, the referenced canons do not lead to the result asserted by the comments. The series-qualifier canon is not applicable here because not all the items in the list at section 6045(g)(3)(B) are consistent with the “financial instrument” language following the list. For example, section 6045(g)(3)(B)(iii) references any commodity, which under § 1.6045–1(a)(5) of the final regulations effective before the effective date of these final regulations¹ and these final regulations, specifically includes physical assets, such as lead, palm oil, rapeseed, tea, and tin, which are not financial instruments. The term *commodity* also includes any type of personal property that is traded through regulated futures contracts approved by the U.S. Commodity Futures Trading Commission (CFTC), which include live cattle, natural gas, and wheat. See § 1.6045–1(a)(5) of the pre-2024 final regulations. (These final regulations also add to the definition of *commodity*

personal property that is traded through regulated futures contracts certified to the CFTC.) These assets also are not financial instruments. Consequently, the term “any other financial instrument” in section 6045(g)(3)(B)(v) should not be read to limit the meaning of the items in the list that came before it. For similar reasons, the rule of last antecedent also does not limit the meaning of digital assets. Prior to the changes made to section 6045 by the Infrastructure Act, the financial instruments language followed the commodities clause. As such, when enacted the financial instruments phrase could not have been intended to limit the item in the list (commodity) that immediately preceded it. Accordingly, the Treasury Department and the IRS understand the inclusion of other financial instruments as potential specified securities as a grant of authority to expand the list of specified securities, not as a provision limiting the meaning of the other asset types listed as specified securities.

One comment suggested that the final regulations should limit the definition of a digital asset to exclude NFTs not used as payment or investment instruments to align the section 6045 reporting rules with other rules and regulatory frameworks. One comment recommended limiting the definition to only digital assets that can be converted to U.S. dollars, another fiat currency, or an asset with market value. Several comments suggested that including all NFTs in the definition of digital assets would be inconsistent with the intended guidance announced in Notice 2023–27, *Treatment of Certain Nonfungible Tokens as Collectibles*, 2023–15 I.R.B. 634 (April 10, 2023), which indicated that the IRS intends to determine whether an NFT constitutes a collectible under section 408(m) of the Code by using a look-through analysis that looks to the NFT’s associated right or asset. Other comments recommended that the final regulations limit the definition of digital assets to exclude NFTs not used as payment or investment instruments to align the section 6045 reporting rules with the reporting rules for digital assets by foreign governments, such as the Council directive (EU) 2023/2266 of 17 October amending Directive 2011/16/EU on administrative cooperation in the field of taxation, which is popularly known as DAC8. Yet other comments recommended that the final regulations conform to guidelines from the Financial Action Task Force (FATF), an inter-governmental body that sets international standards that aim to prevent money laundering and terrorism

financing. FATF guidelines distinguish between those NFTs that are used “as collectibles” from those used “as payment or investment instruments.” Finally, one comment urged the Treasury Department and the IRS to follow the Financial Accounting Standards Board (FASB) standards, which completely exclude NFTs from their definition of digital assets due to their nonfungible nature. FASB, *Accounting Standards Update, Intangibles—Goodwill and Other—Crypto Assets* (Subtopic 350–60), No. 2023–08, December 2023.

These final regulations do not adopt these comments because they would make the definition of digital assets unduly restrictive. The goal behind information reporting by brokers is to close or significantly reduce the income tax gap from unreported income and to provide information that assists taxpayers. Information reporting generally can achieve that objective when brokers report to the IRS and to their customers the information necessary for customers to report their income. The considerations relevant to a U.S. third party information reporting regime are not the same as the considerations that are relevant to the definition of collectibles under section 408(m), which applies in order to determine assets that have adverse tax consequences if acquired by certain retirement accounts and that are subject to special tax rates. While non-tax policies relating to combating money laundering and terrorism financing or guidelines for generally accepted accounting standards may have some relevance, they are not determinative for Federal tax purposes under the Code. Finally, the Treasury Department and the IRS understand that DAC8 is intended to apply in the same manner as a closely related OECD standard, discussed in the next paragraph. Moreover, NFTs that are actively traded on trading platforms appear to be used for investment purposes in addition to any other purposes. Publicly available information reports that trading in some NFT collections has been in the billions of dollars over time and that 24-hour trading volume in NFTs in 2024 has ranged from \$60–410 million. This trading activity suggests that at least some NFT collections have sufficient volume and liquidity to facilitate their use as investments rather than as traditional collectibles.

Another comment suggested that the final regulations should limit the definition of digital assets to exclude NFTs to align the section 6045 definition of digital assets with the definition of “Relevant Crypto-Asset”

¹ Numerous Treasury decisions have been published under § 1.6045–1. See T.D. 7873, 48 FR 10302 (Mar. 11, 1983); T.D. 7880, 48 FR 12940 (Mar. 28, 1983); T.D. 7932, 48 FR 57485 (Dec. 30, 1983); T.D. 7960, 49 FR 22281 (May 29, 1984); T.D. 8445, 57 FR 53031 (Nov. 6, 1992); T.D. 8452, 57 FR 58983 (Dec. 14, 1992); T.D. 8683, 61 FR 53058 (Oct. 10, 1996); T.D. 8734, 62 FR 53387 (Oct. 14, 1997); T.D. 8772, 63 FR 35517 (Jun. 30, 1998); T.D. 8804, 63 FR 72183 (Dec. 31, 1998); T.D. 8856, 64 FR 73408 (Dec. 30, 1999); T.D. 8881, 65 FR 32152 (May 22, 2000), corrected 66 FR 18187 (April 6, 2001); T.D. 8895, 65 FR 50405 (Aug. 18, 2000); T.D. 9010, 67 FR 48754 (Jul. 26, 2002); T.D. 9241, 71 FR 4002 (Jan. 24, 2006); T.D. 9504, 75 FR 64072 (Oct. 18, 2010); T.D. 9616, 78 FR 23116 (April 18, 2013); T.D. 9658, 79 FR 12726 (Mar. 6, 2014); T.D. 9713, 80 FR 13233 (Mar. 13, 2015); T.D. 9750, 81 FR 8149 (Feb. 18, 2016), corrected 81 FR 24702 (Apr. 27, 2016); T.D. 9774, 81 FR 44508 (Jul. 8, 2016); T.D. 9808, 82 FR 2046 (Jan. 6, 2017), corrected 82 FR 29719 (Jun. 30, 2017); T.D. 9984, 88 FR 87696 (Dec. 19, 2023). The regulations effective before the effective date of these final regulations will collectively be referred to as the pre-2024 final regulations.

under the Crypto-Asset Reporting Framework (CARF), a framework for the automatic exchange of information between countries on crypto-assets developed by the Organisation for Economic Co-operation and Development (OECD) and to which the United States is a party. As discussed in Part I.G.2. of this *Summary of Comments and Explanation of Revisions*, once the United States implements the CARF, U.S. digital asset brokers will need to file information returns under both these final regulations with respect to their U.S. customers, and, under separate final regulations implementing the CARF reporting requirements, with respect to their non-U.S. customers that are resident in jurisdictions implementing the CARF. These final regulations generally attempt to align definitions with those used in the CARF to the extent possible. In this case, however, the final regulations do not adopt this comment because the CARF's definition of Relevant Crypto-Assets is already consistent with a definition of digital assets that includes NFTs. As noted in paragraph 12 of the CARF's Commentary on Section IV: Defined terms, although NFTs are often marketed as collectibles, this function does not prevent an NFT from being able to be used for payment or investment purposes. "NFTs that are traded on a marketplace can be used for payment or investment purposes and are therefore to be considered Relevant Crypto-Assets." See Part I.G.1. of this *Summary of Comments and Explanation of Revisions*, for a discussion of the United States' implementation of the CARF.

Notwithstanding that the final regulations include NFTs in the definition of digital assets under section 6045(g)(3)(D), the Treasury Department and the IRS have determined that, pursuant to discretion under section 6045(a), it is appropriate to provide an alternative reporting method for certain types of NFTs to alleviate burdensome reporting. As discussed in Part I.D.3. of this *Summary of Comments and Explanation of Revisions*, the final regulations have added a new optional alternative reporting method for sales of certain NFTs to allow for aggregate reporting instead of transactional reporting, with a *de minimis* annual threshold below which no reporting is required. The Treasury Department and the IRS anticipate that the *de minimis* annual threshold will eliminate reporting on many low-value NFT transactions that are less likely to be

used for payment or investment purposes.

3. Closed Loop Assets

The preamble to the proposed regulations stated that the definition of a digital asset was not intended to apply to the types of virtual assets that exist only in a closed system and cannot be sold or exchanged outside that system for fiat currency. The preamble also stated that the definition of digital assets was not intended to cover uses of distributed ledger technology for ordinary commercial purposes, such as tracking inventory or processing orders for purchase and sale transactions, that do not create transferable assets and are therefore not likely to give rise to sales as defined for purposes of the regulations. Several comments requested that the final regulations be revised to provide an exception for closed loop uses in the regulatory text and to add examples illustrating that these types of virtual assets are not included in the definition of a digital asset. Another comment recommended that the final regulations expressly limit the definition of digital assets to only those digital assets that function as currency as described in Notice 2014–21 or that have the capability of being purchased, sold, or exchanged. The Treasury Department and the IRS agree that the text of the final regulations should make clear that transactions involving digital assets in the above-described closed loop environments should not be subject to reporting. The final regulations do not limit the definition of a digital asset as requested to accommodate these comments, however, because it is not clear how the definition could narrowly carve out only these closed loop digital assets without also carving out other assets for which reporting is appropriate. Instead, to address these comments, the final regulations add transactions involving these closed loop digital assets to the list of excepted sales that are not subject to reporting under § 1.6045–1(c)(3)(ii). See Part I.C. of this *Summary of Comments and Explanation of Revisions*, for a discussion of the closed loop transactions added to the list of excepted sales at § 1.6045–1(c)(3)(ii).

4. Coordination With Reporting Rules for Securities, Commodities, and Real Estate

The preamble to the proposed regulations noted that the Treasury Department and the IRS are aware that many provisions of the Code incorporate references to the terms security or commodity, and that questions exist as to whether, and if so,

when, a digital asset may be treated as a security or a commodity for purposes of those Code sections. Apart from the rules under sections 1001 and 1012 discussed in Part II. of this *Summary of Comments and Explanation of Revisions*, these final regulations are information reporting regulations, and are therefore not the appropriate vehicle for answering those questions. Accordingly, the treatment of an asset as reportable as a security, commodity, digital asset, or otherwise in these rules applies for purposes of sections 3406, 6045, 6045A, 6045B, 6050W, 6721, and 6722 of the Code, and for certain purposes of sections 1001 and 1012, and should not be construed to apply for any other purpose of the Code, including but not limited to determining whether a digital asset should be classified as a security, commodity, option, securities futures contract, regulated futures contract, or forward contract.

One comment expressed concern that promulgation of final regulations requiring brokers to report on digital asset transactions could be cited by other government agencies to support treating digital assets as securities for purpose of the securities statutes, rules, and regulations. This comment requested that these regulations not take any position on whether digital assets are securities for these other purposes. The Treasury Department and the IRS agree with this comment. The potential characterization of digital assets as securities, commodities, or derivatives for purposes of any other legal regime, such as the Federal securities laws and the Commodity Exchange Act, is outside the scope of these final regulations.

a. Special Coordination Rules for Dual Classification Assets

Because § 1.6045–1(a)(9) of the pre-2024 final regulations (redesignated in the proposed and final regulations as § 1.6045–1(a)(9)(i)) require reporting with respect to sales for cash of securities as defined in § 1.6045–1(a)(3) and certain commodities as defined in § 1.6045–1(a)(5), the proposed regulations included coordination rules to provide certainty to brokers with respect to whether a particular transaction involving securities or certain commodities is reportable as a securities or commodities sale under proposed § 1.6045–1(a)(9)(i) (sale of securities or commodities) or as a digital assets sale under proposed § 1.6045–1(a)(9)(ii) (sale of digital assets) and to avoid duplicate reporting obligations. Specifically, for transactions involving the sale of a digital asset that also constitutes the sale of a commodity or security (other than options that

constitute contracts covered by section 1256(b) of the Code) (dual classification assets), the proposed regulations provided that the broker would report the sale only as a sale of a digital asset and not as a sale of a security or commodity.

Numerous comments raised the concern that requiring brokers that have been historically reporting sales of securities and commodities on Form 1099-B, *Proceeds from Broker and Barter Exchange Transactions* to report these transactions as sales of digital assets on Form 1099-DA, *Digital Asset Proceeds From Broker Transactions* would force these brokers to overhaul their existing reporting systems and potentially cause confusion for taxpayers who are not even aware that their securities and commodities have been tokenized. To address this concern, some comments recommended that the digital asset definition be revised to exclude some or all securities and commodities. Other comments recommended revising the coordination rule so that the reporting rules for sales of securities and commodities apply to digital assets that are also securities or commodities. One comment suggested applying the reporting rules for sales of securities and commodities to any digital asset that represents a fund subject to the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.* (1940 Act Fund), or another highly regulated product outside of 1940 Act Funds.

The final regulations do not adopt the comments recommending that sales of dual classification assets generally be reported as sales of securities or commodities. One of the benefits of treating dual classification assets as digital assets is that it avoids forcing brokers to make determinations about whether the dual classification asset is properly classified as a security or a commodity under current law. For example, a rule that treats all dual classification assets as securities and commodities would require brokers to determine whether a digital asset that represents a governance token is properly classified as a security under final § 1.6045-1(a)(3) to determine how to report sales of that digital asset. Moreover, such a rule would affect reporting on digital assets commonly referred to as cryptocurrencies that fit within the definition of a commodity under final § 1.6045-1(a)(5)(i) because the trading of regulated futures contracts in that digital asset has been certified to the CFTC. It would be inappropriate for brokers to report these assets as sales of commodities rather than as sales of digital assets because, as is discussed in Part I.F. of this *Summary of Comments*

and *Explanation of Revisions*, it is important that brokers report basis for these sales.

Other comments offered recommendations designed to limit reporting of dual classification assets under the rules governing sales of securities and commodities. For example, one comment recommended that the reporting rules for sales of securities and commodities apply to any digital asset representing readily ascertainable securities or commodities and not purely blockchain-based digital assets, such as cryptocurrencies or governance tokens, for which treatment as securities or commodities may be uncertain. Another comment recommended that the reporting rules for sales of securities and commodities apply to any digital asset that represents a non-digital asset security or commodity otherwise reportable on Form 1099-B under the reporting rules for sales of securities and commodities or is otherwise backed by collateral that represents such non-digital asset. One comment suggested applying the reporting rules for sales of securities and commodities to any digital asset, the blockchain ledger entry for which solely serves as a record of legal ownership of an underlying security or commodity that is not itself a digital asset. Another comment recommended applying the reporting rules for sales of securities and commodities to dual classification assets that are digitally native to a blockchain that is used simply to record ownership changes. Recognizing that identifying digital assets that represent securities and commodities that are not themselves digital assets could be burdensome, one comment recommended that when information is not available for brokers to make these determinations about dual classification assets, the broker should report the transaction as a sale of a digital asset. Another comment requested that the final regulations include a safe harbor rule providing that no penalties will be imposed on a broker who consistently and accurately reports the sale of dual classification assets under either the reporting rules for sales of securities and commodities (on Form 1099-B) or for sales of digital assets (on Form 1099-DA) based on the broker's reasonable determination that the chosen reporting method is correct because it may be administratively difficult for brokers to examine every dual classification asset to make a determination based on the nature of the asset.

Numerous comments also focused on the circumstances that may give rise to securities and commodities being treated as digital assets. For example,

one comment indicated that the proposed coordination rule would inadvertently capture transactions involving securities and commodities for which brokers use distributed ledger technology, shared ledgers, or similar technology merely to facilitate the processing, clearing, or settlement of orders between well-regulated brokers and other financial institutions. To address this concern, several comments recommended that the reporting rules for sales of securities and commodities apply only to digital assets that are more appropriately categorized within a traditional asset class (for example, as a security with an effective registration statement filed under the Securities Act of 1933) and that are issued, stored, or transferred through a distributed ledger that is a regulated clearing agency system in compliance with all applicable Federal and State securities laws. Another comment recommended addressing this problem by making the information required to be reported for digital asset sales (on Form 1099-DA) not more burdensome than that for securities and commodities (on Form 1099-B). Another comment requested that, if brokers are required to report these dual classification assets on the Form 1099-DA, the final regulations allow brokers to optionally make appropriate basis adjustments for dual classification assets that are securities. This comment also recommended revising the rules in § 1.6045-1(d)(2)(iv)(B) of the pre-2024 final regulations to permit (but not require) brokers to take into account information about a covered security other than what is furnished on a transfer statement or issuer statement and to provide penalty relief under certain circumstances to brokers that take such information into account. Finally, one comment recommended providing written clarity that even though wash sale adjustment rules do not apply to digital assets, they still apply to tokenized securities such as, for example, 1940 Act Funds.

The Treasury Department and the IRS have concluded that it is generally not appropriate to permit optional approaches to reporting dual classification assets because the underlying reporting requirements for securities and commodities are significantly different from those for digital assets due, in large part, to industry differences and the timing of when the reporting rules were first implemented. Although the proposed requirement for brokers to report transaction identification numbers and digital asset addresses has been

removed in these final regulations (*see* Part I.D. of this *Summary of Comments and Explanation of Revisions*), there are several remaining differences in the basis reporting requirements for securities and commodities as compared to digital assets. For example, unlike brokers effecting sales of digital assets, brokers effecting sales of commodities are not required to report the customer's adjusted basis for those commodities because commodities are not included in the definition of covered securities. Additionally, brokers effecting sales of stock, other than stock for which the average basis method is available under § 1.1012-1(e), must generally report the adjusted basis of these shares to the extent they were acquired for cash in an account on or after January 1, 2011, and generally must report the adjusted basis on shares of stock for which the average basis method is available to the extent those shares were acquired for cash in an account on or after January 1, 2012. These brokers of stock that are covered securities under final § 1.6045-1(a)(15)(i)(A) or (B) must also send transfer statements to other brokers under section 6045A when their customers move that stock to another broker.

In contrast, as discussed in Part I.F. of this *Summary of Comments and Explanation of Revisions*, under the final regulations, brokers effecting sales of digital assets that are covered securities under final § 1.6045-1(a)(15)(i)(I) are required to report the adjusted basis of those digital assets only if they were acquired for cash, stored-value cards, different digital assets, or certain other property or services in the customer's account by such brokers providing custodial services for such digital assets on or after January 1, 2026. Additionally, these brokers are not currently required to send transfer statements to other brokers under section 6045A when their customers transfer digital assets that are specified securities to another broker. Indeed, the details of how section 6045A reporting will apply to brokers of digital assets will not be addressed until a future notice of proposed rulemaking. Accordingly, whether the sale of a dual classification asset is treated as a sale of a security or commodity under final § 1.6045-1(a)(9)(i) or as a sale of a digital asset under final § 1.6045-1(a)(9)(ii) has consequences beyond the particular form that the broker must use when filing returns with respect to those sales.

Given these different basis reporting requirements and transfer statement obligations under section 6045A, the Treasury Department and the IRS have

determined that, except in the case of certain exceptions described in the next several paragraphs, it is not appropriate to treat dual classification assets as subject only to the pre-2024 final regulations (that is, required to report the transactions under final § 1.6045-1(d)(2)(i)(A) as sales described in final § 1.6045-1(a)(9)(i) for securities and commodities if those assets can be traded on public blockchains and custodied by customers. Accordingly, final § 1.6045-1(c)(8)(i) provides that brokers must generally treat sales of dual classification assets only as a sale of a digital asset under final § 1.6045-1(a)(9)(ii) and only as a sale of a specified security that is a digital asset under final § 1.6045-1(a)(14)(v) or (vi). As such, the broker must apply the digital asset reporting rules for the information required to be reported for such sale and file the return on Form 1099-DA. Further, as discussed in Part IV. of this *Summary of Comments and Explanation of Revisions*, brokers are not required to send transfer statements under final § 1.6045A-1(a)(1)(vi) with respect to the transfer of these dual classification assets that are reportable as digital assets. Additionally, final § 1.6045-1(d)(2)(iv)(B) does not permit brokers to take into account any other information, including information received from a customer or third party, with respect to covered securities that are digital assets, although brokers may take customer-provided acquisition information into account for purposes of identifying which units are sold, disposed of, or transferred under final § 1.6045-1(d)(2)(ii)(A).

However, to accommodate the comments relating to the application of the various basis adjustment rules, including the wash sale adjustment rules, and other important information applicable to dual classification assets that represent an interest in a traditional security, final § 1.6045-1(c)(8)(i)(D) requires the broker to report certain additional information with respect to any dual classification asset that is a tokenized security. For this purpose, any dual classification asset that provides the holder with an interest in another asset that is a security under final § 1.6045-1(a)(3), other than a security that is also a digital asset, is a tokenized security. This description is intended to apply when the digital asset represents an interest in a separate, traditional, financial asset that is reportable as a security. For example, a digital asset that represents an ownership interest in a traditional share of stock in a 1940 Act Fund or another corporation would be a tokenized

security. A dual classification asset that is an interest in a trust or partnership that holds assets that are securities under final § 1.6045-1(a)(3), other than securities that are also digital assets, also would be a tokenized security.

In addition, an asset the offer and sale of which was registered with the U.S. Securities and Exchange Commission (SEC) (other than an asset treated as a security for securities law purposes solely as an investment contract) is also treated as a tokenized security. This part of the description of tokenized securities is intended to refer to a digital asset that is also a security within the meaning of final § 1.6045-1(a)(3) but does not represent an interest in a separate financial asset. A bond that exists solely in tokenized form would be an example of such a tokenized security, if the bond was issued pursuant to a registration statement approved by the SEC. The reference to whether an asset's offer and sale was registered with the SEC, other than solely as an investment contract, is intended to limit the scope of the term tokenized security to digital forms of traditional financial assets, and not to capture assets native to the digital asset ecosystem. The reference to registration of an asset's offer and sale with the SEC is not intended to imply that such assets are necessarily securities for Federal income tax purposes or for purposes of final § 1.6045-1(a)(3). Additionally, no inference is intended as to how the Federal securities laws apply to sales of digital assets within the meaning of final § 1.6045-1(a)(19), as the interpretation or applicability of those laws are outside the scope of these final regulations.

For the avoidance of doubt, final § 1.6045-1(c)(8)(i)(D) provides that a qualifying stablecoin is not treated as a tokenized security for purposes of these special rules. For sales of tokenized securities, final § 1.6045-1(c)(8)(i)(D) provides that the broker must report additional information required by final § 1.6045-1(d)(2)(i)(B)(6), generally relating to gross proceeds. Final § 1.6045-1(d)(2)(i)(B)(6) requires that the broker report the Committee on Uniform Security Identification Procedures (CUSIP) number of the security sold, any information related to options required under final § 1.6045-1(m), any information related to debt instruments under final § 1.6045-1(n), and any other information required by the form or instructions. In addition, final § 1.6045-1(c)(8)(i)(D) provides that the broker must report additional information required by final § 1.6045-1(d)(2)(i)(D)(4) (relating to reporting for basis and holding period) for sales of

tokenized securities, except that the broker is not required to report such information for a tokenized security that is an interest in another asset that is a security under final § 1.6045–1(a)(3), other than a security that is also a digital asset, unless the tokenized security is also a specified security under final § 1.6045–1(a)(14)(i), (ii), (iii), or (iv). Accordingly, because a trust or partnership interest is not a specified security within the meaning of those paragraphs, a broker is not required to report basis information with respect to a tokenized security that is an interest in a trust or partnership that holds assets that are securities under final § 1.6045–1(a)(3), other than securities that are also digital assets.

Final § 1.6045–1(d)(2)(i)(D)(4) provides specific rules for reporting basis and related information for tokenized securities. It cross-references the wash sale rules in final § 1.6045–1(d)(6)(iii)(A)(2) and (d)(7)(ii)(A)(2), which rules have also been revised to specifically apply to tokenized securities. These wash sale reporting rules apply only to assets treated as stock or securities within the meaning of section 1091 of the Code. They apply regardless of whether the taxpayer buys or sells a tokenized security. For example, if a taxpayer sells a tokenized security (or the underlying traditional stock or security) at a loss and buys the same tokenized security (or the underlying traditional stock or security) within the 30-day period before or after the sale, and the other conditions to the wash sale reporting rules are satisfied, the broker would be required to take the wash sale reporting rules into account in reporting the loss and the basis of the newly acquired asset. Final § 1.6045–1(d)(2)(i)(D)(4) also cross-references the average basis rules in final § 1.6045–1(d)(6)(v), which have been revised to apply to any stock that is also a tokenized security, and the rules related to options and debt instruments in final § 1.6045–1(m) and (n). Accordingly, the information reportable for tokenized securities on Form 1099–DA should be similar to the information reportable for traditional securities on Form 1099–B, except that under final § 1.6045A–1(a)(1)(vi), no transfer statement is required with respect to the transfer of tokenized securities, though penalty relief is provided if the broker voluntarily chooses to provide a transfer statement with respect to tokenized securities. Additionally, until the Treasury Department and the IRS determine which third party information is sufficiently reliable, final § 1.6045–1(d)(2)(iv)(B) provides that

brokers are not permitted to take into account information about covered securities that are digital assets other than what is furnished on a transfer statement or issuer statement, although brokers may take customer-provided acquisition information into account for purposes of identifying which units are sold, disposed of, or transferred under final § 1.6045–1(d)(2)(ii)(A). The Treasury Department and the IRS intend to provide additional guidance on how to report tokenized securities in the instructions to Form 1099–DA.

Final § 1.6045–1(d)(2)(i)(D)(3) requires that, for purposes of determining the basis and holding period information required in final § 1.6045–1(d)(2)(i)(D)(1) and (2), the rules related to options in final § 1.6045–1(m) apply, both with respect to the option and also with respect to any asset delivered in settlement of an option. Accordingly, an option that is itself a digital asset, on an asset that is also a digital asset, is subject to the same reporting rules as other options.

Additionally, in response to the comments described above, the Treasury Department and the IRS have determined that the final regulations should include three exceptions to the rules requiring that dual classification assets be reported as digital assets, for the reasons described herein. Those exceptions apply to dual classification assets cleared or settled on a limited-access regulated network, to dual classification assets that are section 1256 contracts, and to dual classification assets that are shares in money market funds.

First, the Treasury Department and the IRS agree that it is not appropriate to disrupt reporting on dual classification assets that are treated as digital assets solely because distributed ledger technology is used to facilitate the processing, clearing, or settlement of orders between regulated financial entities. Accordingly, in response to the comments submitted, final § 1.6045–1(c)(8)(iii) adds a new exception to the coordination rule for any sale of a dual classification asset that is a digital asset solely because the sale of such asset is cleared or settled on a limited-access regulated network. Under this exception, such a sale will be treated as a sale described in final § 1.6045–1(a)(9)(i) (reportable on the Form 1099–B) and not as a digital asset described in final § 1.6045–1(a)(9)(ii) (reportable on the Form 1099–DA). Additionally, such a sale must be treated as a sale of a specified security under final § 1.6045–1(a)(14)(i), (ii), (iii), or (iv) to the extent applicable, and not as a sale of a specified security that is a digital

asset under final § 1.6045–1(a)(14)(v) or (vi). For all other purposes of this section including transfers, a dual classification asset that is a digital asset solely because it is cleared or settled on a limited-access regulated network is not treated as a digital asset and is not reportable as a digital asset. Accordingly, depending on the type of the asset, the asset may be a covered security under final § 1.6045–1(a)(15)(i)(A) through (G) (if purchased in an account on or after January 1, 2011 through 2016, as applicable) rather than a digital asset covered security under final § 1.6045–1(a)(15)(i)(H), (J) or (K) (if purchased in an account on or after January 1, 2026). Thus, brokers are required under section 6045A to provide transfer statements with respect to transfers of these dual classification assets, and the rules set forth in final § 1.6045–1(d)(2)(iv)(A) and (B), regarding the broker's obligation to take into account the information reported on those statements and certain other customer provided information also apply.

Final § 1.6045–1(c)(8)(iii)(B) sets forth three different types of limited-access regulated network for which this rule applies. The first type of limited-access network is described as a cryptographically secured distributed ledger or network of interoperable distributed ledgers that provide clearance or settlement services and provide access only to a group of persons made up of registered dealers in securities or commodities, banks and similar financial institutions, common trust funds, or futures commission merchants. Final § 1.6045–1(c)(8)(iii)(B)(1)(i). As used in this rule, an interoperable distributed ledger means a group of distributed ledgers that permit digital assets to travel from one permissioned distributed ledger (for example, at one securities broker) to another permissioned distributed ledger (at another securities broker). In such cases, while the clearance or settlement of the dual classification asset is on a network of permissioned distributed ledgers, it is anticipated that the asset will remain in a traditional securities or commodities account from the perspective of an investor in the asset and so can readily be reported as a security or commodity under existing rules.

The second type of limited-access network is also described as a cryptographically secured distributed ledger or network of interoperable distributed ledgers that provide clearance or settlement services, but this type of limited-access network is distinguishable from the first type

because it is provided by an entity that has registered with the SEC as a clearing agency, or has received an exemption order from the SEC as a clearing agency, under section 17A of the Securities Exchange Act of 1934. Additionally, the entity must provide access to the network exclusively to network participants, who are not required to be registered dealers in securities or commodities, banks and similar financial institutions, common trust funds, or futures commission merchants, although it is anticipated that participants typically will be securities brokers and other regulated financial institutions. Final § 1.6045–1(c)(8)(iii)(B)(1)(ii). For example, dual classification assets cleared and settled through a central clearing agency that clears and settles high volumes of equity and debt transactions on a daily basis through automated systems for participants that are financial market participants may be reportable as securities under this exception if the clearance or settlement takes place on a cryptographically secured distributed ledger or network of interoperable distributed ledgers.

Finally, the third type of limited-access regulated network is a cryptographically secured distributed ledger controlled by a single person that is a registered dealer in securities or commodities, a futures commission merchant, a bank or similar financial institution, a real estate investment trust, a common trust fund, or a 1940 Act Fund, that permits the ledger to be used solely by itself and its affiliates (and not to any customers or investors) to clear or settle sales of assets. Final § 1.6045–1(c)(8)(iii)(B)(2). As with the other types of limited-access regulated network, it is anticipated that from an investor perspective the assets will remain in a traditional securities or commodities account.

This exception in final § 1.6045–1(c)(8)(iii) is limited to dual classification assets that are digital assets solely because the sale of such dual classification asset is cleared or settled on a limited-access regulated network. Accordingly, a digital asset commonly referred to as a cryptocurrency that fits within the definition of commodity under final § 1.6045–1(a)(5)(i) because the trading of regulated futures contracts in that digital asset have been approved by or certified to the CFTC will not be eligible for this rule because the cryptocurrency meets the definition of a digital asset for reasons other than because it is cleared or settled on a limited-access regulated network. Given the requirement that the sole reason that the security or

commodity is a digital asset is that transactions involving those assets are cleared or settled on a limited-access regulated network, it is anticipated that brokers will have sufficient information to be able to determine how to report the assets in question under these revised rules. Accordingly, the request for a safe harbor that would allow brokers to avoid penalties if they consistently and accurately report sales of dual classification assets under either final § 1.6045–1(d)(2)(i)(A) (on Form 1099–B) or final § 1.6045–1(d)(2)(i)(B) and (D) as a digital asset (on Form 1099–DA) is not adopted as it is unnecessary.

The second exception to the general dual classification asset coordination rule in final § 1.6045–1(c)(8)(i) treating such assets as digital assets was included in the proposed regulations. Proposed § 1.6045–1(c)(8)(iii) provided that digital asset options or other contracts that are also section 1256 contracts should be reported under the rules set forth in § 1.6045–1(c)(5) of the pre-2024 final regulations for contracts that are section 1256 contracts and not under the proposed rules for digital assets. The final regulations retain this exception and redesignate it as final § 1.6045–1(c)(8)(ii). Accordingly, under this rule, for the disposition of a contract that is a section 1256 contract, reporting is required under § 1.6045–1(c)(5) of the pre-2024 final regulations regardless of whether the contract disposed of is a non-digital asset contract or a digital asset contract or whether the contract was issued with respect to digital asset or non-digital asset underlying property. One comment raised a concern that the proposed rule did not make it clear that information reporting for a section 1256 contract subject to information reporting under section 6045 should be reported on a Form 1099–B regardless of whether the contract is or is not a digital asset. The final regulations respond to this concern by providing additional clarification to the text of § 1.6045–1(c)(5)(i) of the pre-2024 final regulations to make it clear that reporting for all section 1256 contracts should be on Form 1099–B. Accordingly, information reporting for section 1256 contracts in digital asset form will be on Form 1099–B and not on Form 1099–DA.

The third exception to the general dual classification asset coordination rule in final § 1.6045–1(c)(8)(i) treating such assets as digital assets applies to interests in money market funds. Final § 1.6045–1(c)(8)(iv) provides that brokers must treat sales of any dual classification asset that is a share in a regulated investment company that is

permitted to hold itself out to investors as a money market fund under Rule 2a-7 under the Investment Company Act of 1940 (17 CFR 270.2a-7) only as a sale under final § 1.6045–1(a)(9)(i) and not as a digital asset sale under final § 1.6045–1(a)(9)(ii). Accordingly, under § 1.6045–1(c)(3)(vi) of the pre-2024 final regulations, no return of information is required for these shares. This exception is included in the final regulations because the reasons for not requiring reporting of money market shares in traditional form are also applicable for money market shares in digital asset form. Notably, in either case, the disposition of money market shares by non-exempt recipients like individuals generally will give rise to no, or *de minimis*, gain or loss. Moreover, money market funds are a special type of regulated investment company that provide a highly regulated product widely used as a surrogate for cash.

In response to a number of comments, the Treasury Department and the IRS considered whether an exception should apply more broadly to tokenized shares of other 1940 Act Funds. Based on publicly available information, the Treasury Department and the IRS are aware that some 1940 Act Funds permit their shares to be bought and sold in secondary market transactions on a cryptographically secured distributed ledger on a direct peer-to-peer basis—that is, an investor may transfer the shares directly to another investor—and that those shares may be purchased in exchange for other digital assets. The Treasury Department and the IRS have determined that these transactions go beyond the scope of the pre-2024 final regulations, which are applicable to sales of securities for cash, and that such assets therefore should be reported as digital assets. However, as described in the discussion of tokenized securities above, the information reportable by brokers to investors with respect to such shares of 1940 Act Funds, including the availability of average basis reporting, generally should not change, although the information will be reported on Form 1099–DA rather than Form 1099–B.

Finally, the proposed regulations would have included one additional exception to the general coordination rule that would have treated dual classification assets as digital assets. Specifically, proposed § 1.6045–1(c)(8)(ii) provided that a digital asset that also constitutes reportable real estate would be treated as reportable real estate to ensure that real estate reporting persons would only report transactions involving these sales as sales that are subject to reporting under

§ 1.6045–4(a) of the pre-2024 final regulations and not as sales of digital assets. One comment noted that currently, there is no State law that permits legal title to real estate to be held via a digital asset token. Instead, this comment explained that to transfer real estate using digital assets, the digital asset token must hold an interest in a legal entity (typically either a limited liability company (LLC) or a partnership) that in turn owns the real estate. Thus, according to this comment, each token holder owns an ownership interest in an entity, not a claim of ownership to real estate. This comment also noted that, even if a legal entity was not required to be formed to hold title to real estate, these digital asset interests could potentially constitute an unincorporated association of real estate co-owners meeting the definition of a partnership under § 301.7701–3(b)(1)(i). Either way, this comment asserted, reporting on the sale of these interests is not appropriate as a sale of real estate under § 1.6045–4. No comments received suggested that blockchain deeds do exist. The Treasury Department and the IRS are not aware of any current or proposed State law that authorizes legal title to real estate to be held in a digital asset token. Therefore, to address this comment, the final regulations remove this coordination rule for digital assets that constitute reportable real estate. Accordingly, brokers should report on sales of these interests as sales of digital assets under § 1.6045–1(a)(9)(ii) (unless the sales are eligible for the special rule under § 1.6045–1(c)(8)(iii) for securities and commodities cleared or settled on a limited-access regulated network) and not as sales of real estate under § 1.6045–4. The Treasury Department and the IRS will continue to track developments in this area for potential future guidance.

b. Other Coordination Rule Issues

The proposed regulations characterized assets as either digital assets or securities based on the nature of the rights held by the customer. Example 27 in proposed § 1.6045–1(b)(27) demonstrated that rule as applied to a fund formed to invest in digital assets, in which the units of the fund were not recorded using cryptographically secured distributed ledger technology. The Example concluded that investments in the units of this fund are not digital assets because transactions involving these fund units are not secured using cryptography and are not digitally recorded on a ledger, such as a blockchain. One comment requested

that the final regulations clarify that if a unit in a trust is not itself traded on a distributed ledger, the unit in the trust should not be treated as a digital asset merely because the assets held by the trust are digital assets. Generally, the holder of an interest in a trust described in § 301.7701–4(c) (a fixed investment trust or FIT) is treated as directly holding its pro rata share of each asset held by the FIT. This comment raised the concern that this normal look through treatment could require a broker to report transactions in FIT units as digital assets on a Form 1099–DA even if the FIT units are not themselves digital assets. The final regulations amend the language of proposed § 1.6045–1(b)(27) (redesignated in these final regulations as Example 20 in § 1.6045–1(b)(20)) to clarify that for purposes of section 6045, if a FIT unit is not itself tradable on a cryptographically secured distributed ledger, the broker is not required to look through to the FIT's assets and should report the sale of a FIT unit under § 1.6045–1(d)(2)(i)(A) on Form 1099–B. The Example also provides that this answer would be the same if the fund is organized as a C corporation or partnership.

The comment also requested expansion of § 1.6045–1(d)(9) of the pre-2024 final regulations, which eliminates the need for widely held fixed investment trusts (WHFITs) to provide duplicate reporting for sales of securities, so that the rule would also apply to WHFIT sales of digital assets. The Treasury Department and the IRS agree that this suggested change is appropriate and have revised the rule in final § 1.6045–1(d)(9) accordingly. As a result, if a WHFIT sells a digital asset, and interests in the WHFIT are held through a securities broker, the WHFIT would report the sale information to the broker pursuant to § 1.671–5 and the broker would in turn send a Form 1099–DA (the appropriate Form 1099) to the IRS and a copy thereof to any trust interest holder that is not an exempt recipient.

Under the proposed regulations, a notional principal contract (NPC) that is executed in digital asset form is a digital asset. See proposed § 1.6045–1(a)(19). One comment noted that there is no broker reporting under the pre-2024 final regulations under section 6045 for an NPC that is not a digital asset. As a result, the comment recommended that an NPC that is a digital asset be excluded from reporting under section 6045. After consideration of this recommendation, the Treasury Department and the IRS concluded that certain payments related to NPCs in

digital asset form should be reportable as digital asset transactions and therefore decline to adopt the recommendation in the final regulations. However, taking into account that payments on NPCs are generally not reportable under section 6045 under the pre-2024 final regulations, the Treasury Department and the IRS intend to continue to study the issues related to NPC payments. Therefore, Notice 2024–57, which is being issued contemporaneously with these final regulations that provides that brokers are not required to report on certain NPCs in digital form, and that the IRS will not impose penalties under section 6721 or section 6722 for failure to file correct information returns or failure to furnish correct payee statements with respect to these transactions until further guidance is issued. See Part I.C.2. of this *Summary of Comments and Explanation of Revisions* for a further discussion of Notice 2024–57.

One comment requested that the final regulations provide examples to address the proper partnership reporting obligations with respect to digital asset interests that constitute an unincorporated association meeting the definition of a partnership. The final regulations do not adopt this comment as it is outside the scope of these regulations. Another comment requested that the final regulations exempt sales of tokenized partnerships investing in real estate from reporting under section 6045 altogether to avoid duplicative reporting because these partnerships are already subject to reporting such sales under the partnership rules on Form 1065, *U.S. Return of Partnership Income*, Schedule K–1, and because accountants and tax advisors that file Schedules K–1 have more accurate information than brokers regarding the proceeds and basis information partners need for preparing their Federal income tax returns. The Treasury Department and the IRS have concluded that partnership interests that invest in real estate should not be treated any differently than partnership interests that invest in other assets. Accordingly, no exception from reporting is made for digital assets representing partnership interests that invest in real estate.

B. Definition of Brokers Required to Report

1. Custodial Digital Asset Brokers and Non-Custodial Digital Asset Brokers

a. Custodial Industry Participants

Prior to the enactment of the Infrastructure Act, section 6045(c)(1)

defined a *broker* to include a dealer, a barter exchange, and any other person who (for a consideration) regularly acts as a middleman with respect to property or services. The pre-2024 final regulations under section 6045 applied the “middleman” portion of this definition to treat as a broker effecting a sale a person that as part of the ordinary course of a trade or business acts as either (1) an agent with respect to a sale, if the nature of the agency is such that the agent ordinarily would know the gross proceeds of the sale, or (2) as a principal in the sale. See § 1.6045–1(a)(1), and (a)(10)(i) and (ii) of the pre-2024 final regulations (redesignated in these final regs as final § 1.6045–1(a)(1) and (a)(10)(i)(A) and (C), respectively). Under these rules, certain digital asset industry participants that take possession of a customer’s digital assets, such as operators of custodial digital asset trading platforms and certain digital asset hosted wallet providers, as well as persons that interact as principals and counterparties to transactions with their customers, such as owners of digital asset kiosks and certain issuers of digital assets who regularly offer to redeem those digital assets, would also generally be considered brokers with respect to digital asset sales.

These industry participants that act as principals and counterparties or as agents to effect digital asset transactions on behalf of their customers (custodial industry participants) are generally financial institutions, such as money services businesses (MSBs), under the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*). Fin-2019–G001, “Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies,” May 9, 2019 (2019 FinCEN Guidance). Anti-money laundering (AML) obligations apply to financial institutions, such as MSBs as defined by the Financial Crimes Enforcement Network (FinCEN), futures commission merchants and introducing brokers obligated to register with the CFTC, and broker-dealers and mutual funds obligated to register with the SEC. “Leaders of CFTC, FinCEN, and SEC Issue Joint Statement on Activities Involving Digital Assets,” October 11, 2019. For example, MSBs are required under regulations issued by the Financial Crimes Enforcement Network (FinCEN) of the Treasury Department to develop, implement, and maintain an effective AML program that is reasonably designed to prevent the MSB from being used to facilitate the financing of terrorist activities and money laundering. See 31 CFR part

1022.210(a). AML programs for MSBs generally include, among other things, policies, procedures, and internal controls reasonably designed to assure compliance with FinCEN’s regulations, as well as a requirement to verify customer-related information. MSBs are also required to register with, and make certain reports to FinCEN, and maintain certain records about transmittals of funds. See 31 CFR part 1022; 2019 FinCEN Guidance. Accordingly, operators of custodial digital asset trading platforms, digital asset hosted wallet providers, and digital asset kiosks have information about their customers and, in many cases, have already reported digital assets sales by these customers under either section 6045 or 6050W. Consistent with the statutory and regulatory definitions of broker that existed prior to the Infrastructure Act as well as amended section 6045, the final regulations apply to operators of custodial digital asset trading platforms, digital asset hosted wallet providers, and digital asset kiosks.

Numerous comments agreed that custodial digital asset trading platforms were appropriately treated as brokers under the proposed regulations, and several comments agreed that digital asset hosted wallet providers should also be treated as brokers. One comment requested that the final regulations exclude from the definition of a broker digital asset hosted wallet providers that do not have direct access to the information necessary to know the nature of the transactions processed or the identities of the parties to the transaction. The Treasury Department and the IRS do not agree that a specific exclusion from the definition of broker for digital asset hosted wallet providers is necessary or appropriate. The pre-2024 final regulations defined broker generally to mean any person that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. The definition of effect under the pre-2024 final regulations treats agents as effecting sales only if the nature of the agency is such that the agent ordinarily would know the gross proceeds of the sale. Accordingly, a digital asset hosted wallet provider that acts as an agent for its customer would be subject to reporting under section 6045 with respect to its customer’s sale of digital assets only to the extent that the digital asset hosted wallet provider ordinarily would know the gross proceeds from that sale.

Another comment requested that the regulations make clear that acting as a broker with respect to one customer does not mean that the person has a

reporting obligation with respect to all customers. This requested guidance relates to § 1.6045–1(c)(2) of the pre-2024 final regulations, which was not amended. This provision makes it clear that a broker is only required to make a return of information for sales that the broker effects for a customer (provided the broker effects that sale in the ordinary course of a trade or business to effect sales made by others). Accordingly, the final regulations do not adopt this comment because the change it requests is unnecessary. Another comment requested that the regulations be clarified to state that the determination of whether a person is a broker is determined on an annual basis and being a broker in one year does not mean that the person is a broker in another year. This requested guidance relates to a portion of § 1.6045–1(a)(1) from the pre-2024 final regulations that was not proposed to be amended and would apply broadly to all brokers under sections 6045 and 6045A, not just those who effectuate sales of digital assets. Accordingly, the final regulations do not adopt this comment because it is outside the scope of these regulations.

b. Non-Custodial Industry Participants

Unlike custodial industry participants, which generally act as principals or as agents to effect digital asset transactions on behalf of their customers, industry participants that do not take possession of a customer’s digital assets (non-custodial industry participants),² such as operators of non-custodial digital asset trading platforms (sometimes referred to as decentralized exchanges or DeFi) and unhosted digital asset wallet providers, normally do not act as custodial agents or principals in effecting their customers’ transactions. Instead, these non-custodial industry participants offer other services, such as providing interface services enabling their customers to interact with trading protocols. To resolve any uncertainty over whether these non-custodial digital asset service providers are brokers, section 80603(a) of the Infrastructure Act amended the definition of *broker* under section 6045 to add “any person who, for consideration, is responsible for regularly providing any service effectuating transfers of digital assets on

² Some digital asset trading platforms that do not claim to offer custodial services may be able to exercise effective control over a user’s digital assets. See Treasury Department, Illicit Finance Risk Assessment of Decentralized Finance (April 2023), <https://home.treasury.gov/system/files/136/DeFi-Risk-Full-Review.pdf>. No inference is intended as to the meaning or significance of custody under any other legal regime, including the Bank Secrecy Act and its implementing regulations, which are outside the scope of these regulations.

behalf of another person” (the new digital asset middleman rule). 167 Cong. Rec. S5702, 5703. To implement this new digital asset middleman rule, the proposed regulations provided that, subject to certain exclusions, any person that provides facilitative services that effectuate sales of digital assets by customers is a broker, provided the nature of the person’s service arrangement with customers is such that the person ordinarily would know or be in a position to know the identity of the party that makes the sale and the nature of the transaction potentially giving rise to gross proceeds. Proposed § 1.6045–1(a)(21)(iii)(A) provided that a facilitative service includes the provision of a service that directly or indirectly effectuates a sale of digital assets, such as providing a party in the sale with access to an automatically executing contract or protocol, providing access to digital asset trading platforms, providing an automated market maker system, providing order matching services, providing market making functions, providing services to discover the most competitive buy and sell prices, or providing escrow or escrow-like services to ensure both parties to an exchange act in accordance with their obligations. The proposed regulations also carved out certain services from this definition, such as certain distributed ledger validation services—whether through proof-of-work, proof-of-stake, or any other similar consensus mechanism—without providing other functions or services, as well as certain sales of hardware, and certain licensing of software, where the sole function is to permit persons to control private keys which are used for accessing digital assets on a distributed ledger. To ensure that existing brokers of property already subject to broker reporting would be considered to effect sales of digital assets when they accept, or otherwise process, certain digital asset payments and to ensure that digital asset brokers would be considered to effect sales of digital assets received as payment for digital asset transaction costs, proposed § 1.6045–1(a)(21)(iii)(B) provided that a facilitative service also includes the services performed by such brokers in accepting or processing those digital asset payments.

The Treasury Department and the IRS received numerous comments directed at these new digital asset middleman rules. One comment recommended the adoption of an IRS-approved central entity service provider to the digital asset marketplace that could gather customer tax identification information

and receive, aggregate, and reconcile information from various custodial and non-custodial industry participants. Another comment recommended allowing the use of an optional tax attestation token to facilitate tax compliance by non-custodial industry participants. Many other comments recommended that non-custodial industry participants not be treated as brokers. Comments also expressed concerns that the proposed definitions of a facilitative service in proposed § 1.6045–1(a)(21)(iii)(A) and position to know in proposed § 1.6045–1(a)(21)(ii) are overbroad and would, consequently, result in duplicative reporting of the same transactions. Numerous comments said the broad definition of a broker would stifle American innovation and drive the digital asset industry to move offshore. Additionally, many of the comments indicated that certain non-custodial industry participants have not collected customer information under AML programs, and therefore do not have systems in place to comply with the proposed reporting by the applicability date for transactions on or after January 1, 2025.

The Treasury Department and the IRS do not agree that non-custodial industry participants should not be treated as brokers. Prior to the Infrastructure Act, section 6045(c)(1) defined the term broker to include a dealer, a barter exchange, and any other person who (for a consideration) regularly acts as a middleman with respect to property or services. Section 80603(a) of the Infrastructure Act clarified the definition of broker under section 6045 to include any person who, for consideration, is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person. According to a report by the Joint Committee on Taxation published in the Congressional Record prior to the enactment of the Infrastructure Act, the change clarified prior law “to resolve uncertainty over whether certain market participants are brokers.” 167 Cong. Rec. S5702, 5703. However, the Treasury Department and the IRS would benefit from additional consideration of issues involving non-custodial industry participants. The Treasury Department and the IRS have determined that the issuance of these final regulations requiring custodial brokers and brokers acting as principals to report digital asset transactions should not be delayed until additional consideration of issues involving non-custodial industry participants is completed because custodial brokers and brokers acting as principals carry

out a substantial majority of digital asset transactions. Clarifying information reporting for the substantial majority of digital asset transactions, consistent with the applicability dates set forth in the proposed regulations, will benefit both taxpayers, who can use the reported information to prepare their Federal income tax returns, and the IRS, which can focus its enforcement resources on taxpayers who are more likely to have underreported their income from digital asset transactions and custodial brokers and brokers acting as principals who may not be meeting their reporting obligations. Accordingly, the proposed new digital asset middleman rules that apply to non-custodial industry participants are not being finalized with these final regulations. The Treasury Department and the IRS continue to study this area and, after full consideration of all comments received, intend to expeditiously issue separate final regulations describing information reporting rules for non-custodial industry participants. Until this further regulatory guidance is issued, the final regulations reserve on the definition of position to know in final § 1.6045–1(a)(21)(ii) and a portion of the facilitative service definition in final § 1.6045–1(a)(21)(iii)(A). Additionally, because comments were received addressing the breadth of the specific exclusions provided for certain validation services, certain sales of hardware, and certain licensing of software, the final regulations also reserve on these exclusions. The Treasury Department and the IRS recognize that persons that are solely engaged in the business of providing validation services without providing other functions or services, or persons that are solely engaged in the business of selling certain hardware, or licensing certain software, for which the sole function is to permit persons to control private keys which are used for accessing digital assets on a distributed ledger, are not digital asset brokers. Accordingly, notwithstanding reserving on the underlying rule to provide time to study the comments received, the final regulations retain the examples in final § 1.6045–1(b)(2)(ix) and (x), which conclude that persons conducting these actions do not constitute brokers.

The final regulations do not, however, reserve on the portion of the facilitative services definition in final § 1.6045–1(a)(21)(iii)(B), which was included to ensure that sales of digital assets conducted by certain persons other than non-custodial industry participants are treated as effected by a broker under

final § 1.6045–1(a)(10). For example, proposed § 1.6045–1(a)(21)(iii)(B), which provided that a facilitative service includes the acceptance of digital assets by a broker in consideration for property reportable under proposed § 1.6045–1(a)(9)(i) and for broker services, was retained and redesignated as final § 1.6045–1(a)(21)(iii)(B)(1) and (3), respectively. Persons that conduct these actions have complete knowledge about the underlying transaction because they are typically acting as the counterparty. Thus, knowledge is not identified as a specific element of the definition of facilitative services for these persons to be treated as conducting facilitative services. Proposed § 1.6045–1(a)(21)(iii)(B) also provided that a facilitative service includes any service provided by a real estate reporting person with respect to a real estate transaction in which digital assets are paid by the buyer in full or partial consideration for the real estate. This rule has been retained with some modifications to the knowledge requirement which must be met before a real estate reporting person will be treated as conducting facilitative services. See Part I.B.4. of this *Summary of Comments and Explanation of Revisions*, for a discussion of the modified rule, now in final § 1.6045–1(a)(21)(iii)(B)(2), with respect to treating real estate reporting persons as performing facilitative services and, thereby, as digital asset middlemen under the final regulations. Additionally, to ensure that a digital asset kiosk that does not act as an agent or dealer in a digital asset transaction will nonetheless be considered a digital asset middleman capable of effecting sales of digital assets under final § 1.6045–1(a)(10)(i)(D), final § 1.6045–1(a)(21)(iii)(B)(5) provides that the acceptance of digital assets in return for cash, stored-value cards, or different digital assets by a physical electronic terminal or kiosk is a facilitative service. Like persons that accept digital assets in consideration for property reportable under proposed § 1.6045–1(a)(9)(i) and for broker services, knowledge is not identified as a specific element of the definition of facilitative services for these kiosks to be treated as conducting facilitative services because these kiosks are typically acting as the counterparty in the digital asset sale transaction. Finally, as discussed in Part I.B.2. of this *Summary of Comments and Explanation of Revisions*, final § 1.6045–1(a)(21)(iii)(B)(4) treats certain PDAPs that receive digital asset payments from one party (buyer) and

pay those digital assets, cash, or different digital assets to a second party as performing facilitative services and, thereby, as digital asset middlemen under the final regulations.

Taken together, these final regulations apply only to digital asset industry participants that take possession of the digital assets being sold by their customers, such as operators of custodial digital asset trading platforms, certain digital asset hosted wallet providers, certain PDAPs, and digital asset kiosks, as well as to certain real estate reporting persons that are already subject to the broker reporting rules. As a result, this preamble does not set forth nor discuss comments received relating to the application of the proposed regulations to non-custodial industry participants (other than persons that operate digital asset kiosks and process payments without taking custody thereof). The Treasury Department and the IRS will continue to consider comments received addressing non-custodial arrangements and plan to expeditiously publish separate final regulations addressing information reporting rules for non-custodial digital asset service providers after issuance of these final regulations.

2. Processors of Digital Asset Payments

PDAPs enable persons (buyers) to make payments to second parties (typically merchants) using digital assets. In some cases, the buyer pays digital assets to the PDAP, and the PDAP in turn pays those digital assets, U.S. dollars, or different digital assets to the merchant. In other cases, the PDAP may not take custody of the digital assets, but instead may instruct or otherwise give assistance to the buyer to transfer the digital assets directly to the merchant. The PDAP may also have a relationship with the merchant specifically obligating the PDAP to process payments on behalf of the merchant.

a. The Proposed Regulations

The proposed regulations used the term digital asset payment processors instead of PDAPs. To avoid confusion associated with the use of the acronym for digital asset payment processors, which may have a different meaning within the digital asset industry, and for ease in reading this preamble, this preamble solely uses the term PDAP, even when referencing the proposed regulations and comments made with respect to the proposed regulations.

The proposed regulations treated PDAPs as brokers that effect sales of digital assets as agents for the buyer. Proposed § 1.6045–1(a)(22)(i)(A) defined

a PDAP as a person who in the ordinary course of its business regularly stands ready to effect digital asset sales by facilitating payments from one party to a second party by receiving digital assets from the first party and exchanging them into different digital assets or cash paid to the second party, such as a merchant. In addition, recognizing that some payment recipients might be willing to receive payments facilitated by an intermediary in digital assets rather than cash in a circumstance in which the PDAP temporarily fixes the exchange rate on the digital asset payment that is transferred directly from a customer to that payment recipient, proposed § 1.6045–1(a)(22)(ii) treated the transfer of digital assets by a customer directly to a second person (such as a vendor of goods or services) pursuant to a processor agreement that provides for the temporary fixing of the exchange rate to be applied to the digital assets received by the second person as if the digital assets were transferred by the customer to the PDAP in exchange for different digital assets or cash paid to the second person.

The proposed regulations also included in the definition of a PDAP certain payment settlement entities and certain entities that make payments to payment settlement entities that are potentially subject to reporting under section 6050W. Specifically, proposed § 1.6045–1(a)(22)(i)(B) provided that a PDAP includes a third party settlement organization (as defined in § 1.6050W–1(c)(2)) that makes (or submits instructions to make) payments using one or more digital assets in settlement of reportable payment transactions as described in § 1.6050W–1(a)(2). Additionally, proposed § 1.6045–1(a)(22)(i)(C) provided that the definition of a PDAP includes a payment card issuer that makes (or submits the instruction to make) payments in one or more digital assets to a merchant acquiring entity, as defined under § 1.6050W–1(b)(2), in a transaction that is associated with a reportable payment transaction under § 1.6050W–1(a)(2) that is effected by the merchant acquiring bank.

Proposed § 1.6045–1(a)(9)(ii)(D) provided that a sale includes all these types of payments processed by PDAPs. Finally, proposed § 1.6045–1(a)(2)(ii)(A) provided that the customer in a PDAP transaction includes the person who transfers the digital assets or directs the transfer of the digital assets to the PDAP to make payment to the second person.

b. Definition of PDAP, PDAP Customer, and PDAP Sales

Several comments stated that some PDAPs contract only with merchants to process and settle digital asset payments on the behalf of those merchants. That is, despite the buyer benefitting from the merchant's relationship with the PDAP, the buyer is not the customer of the PDAP in these transactions. Consequently, these comments warned, PDAPs are unable to leverage any customer relationship to collect personal identification information and other tax documentation—including Form W-9, *Request for Taxpayer Identification Number and Certification*, or Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)*—from buyers. Another comment asserted that treating PDAPs as brokers conflicts with or expands the current FinCEN regulatory AML program requirements for regulated entities to perform due diligence on their customers. Several comments noted that this lack of customer relationship would exacerbate the privacy concerns of the buyers if PDAPs working for the merchant were required to collect tax documentation from buyers. Moreover, these comments raised the concern that collecting this documentation from buyers is even more challenging for one-time small retail purchases because buyers would be unwilling to comply with tax documentation requests at the point of sale. Other comments disagreed with these comments and stated that there is a business relationship between PDAPs and buyers that would make reporting appropriate. Indeed, one comment asserted that PDAPs are technically money transmitters under FinCEN regulations and, as such, are already subject to the AML program obligations, described in Part I.B.1. of this *Summary of Comments and Explanation of Revisions*, with respect to the person making payments. See 31 CFR part 1010.100(ff)(5). Other comments recommended that the definition of broker be aligned with the concepts outlined in FATF to, in their view, clarify that a broker must be a legal person who exercises some measure of control or dominion over digital assets on behalf of another person.

In response to these comments, the Treasury Department and the IRS have concluded that the circumstances under which a person processing digital asset payments for others should be required to report information on those payments to the IRS under section 6045 should be narrowed pending additional

consideration of the issues and comments received concerning non-custodial arrangements discussed in Part I.B.1.b. of this *Summary of Comments and Explanation of Revisions*. Under the final regulations, a PDAP is required to report digital asset payments by a buyer only if the processor already may obtain customer identification information from the buyer in order to comply with AML obligations. In such cases, the processor has the requisite relationship with the buyer to collect additional tax documentation to comply with information reporting requirements. Accordingly, final § 1.6045-1(a)(2)(ii)(A) modifies the proposed definition of customer as it applies to PDAPs to limit the circumstances under which a buyer would be considered the customer of a PDAP. Specifically, under this revised definition, the buyer will be treated as a customer of the PDAP only to the extent that the PDAP has an agreement or other arrangement with the buyer for the provision of digital asset payment services and that agreement or other arrangement provides that the PDAP may verify such person's identity or otherwise comply with AML program requirements, such as those under 31 CFR part 1010, applicable to that PDAP or any other AML program requirements. For this purpose, an agreement or arrangement with the PDAP includes any alternative payment services arrangement such as a computer or mobile application program under which, as part of the PDAP's customary onboarding procedures, the buyer is treated as having agreed to the PDAP's general terms and conditions. The PDAP may also be required to report information on the payment to the merchant on whose behalf the PDAP is acting.

Several comments raised the concern that, to the extent there is no contractual relationship between the PDAP and the buyer, the buyer is not the PDAP's customer, and that the proposed regulations, therefore, exceed the Secretary's authority under section 6045(a), which requires persons doing business as a broker to "make a return . . . showing the name and address of each customer [of the broker], with such details regarding gross proceeds." These comments recommended that the final regulations provide that a PDAP that does not have a contractual relationship with a buyer is not a broker with respect to that buyer. Another comment suggested the regulations should not apply to PDAPs at all without a clear congressional mandate. The Treasury Department and the IRS do not agree

that section 6045 requires specific statutory language with respect to each type of broker that already fits within the definition of broker under section 6045(c)(1). Section 6045(c)(2) defines the term customer as "any person for whom the broker has transacted any business." This definition does not require that the specific transaction at issue be conducted by the broker for the customer. Accordingly, if a PDAP transacts some business with the buyer—such as would be the case if the buyer sets up a payment account with the PDAP—then there is statutory authority to require that the PDAP report on the buyer's payments, even though the activities performed by that PDAP were performed pursuant to a separate contractual agreement with a merchant.

One comment expressed confusion with the definition of PDAP in the proposed regulations. Specifically, this comment requested clarification as to why the definition listed a third party settlement organization separately in proposed § 1.6045-1(a)(22)(i)(B) rather than merely as a subset of the description provided in proposed § 1.6045-1(a)(22)(i)(A), in which the person regularly facilitates payments from one party to a second party by receiving digital assets from the first payment and exchanging those digital assets into cash or different digital assets paid the second party. Another comment expressed confusion over why the processor agreement rules in proposed § 1.6045-1(a)(22)(ii) and (iii) include a provision treating the payment of digital assets to a second party pursuant to a processor agreement that fixes the exchange rate (processor agreement arrangement) as a sale effected by the PDAP. This comment also recommended deleting the processor agreement arrangement paragraphs from the definition of a PDAP and moving them to the definition of gross proceeds.

The definition of a PDAP in the proposed regulations included descriptions of ways that a person could facilitate a payment from one party to a second party. Many of these descriptions involved circumstances in which the buyer transfers the digital asset payment to the PDAP, followed by the PDAP transferring payment to a second party. Several of the descriptions involved circumstances in which the PDAP does not take possession of the payment, but instead instructs the buyer to make a direct transfer of the digital asset payment to the second party, or otherwise, pursuant to a processor agreement, temporarily fixes the

exchange rate to be applied to the digital assets received by the second party.

The Treasury Department and the IRS understand that many of the transactions described in the proposed regulations in which the PDAP does not take possession of the payment are undertaken today by non-custodial industry participants. In light of the decision discussed in Part I.B.1. of this *Summary of Comments and Explanation of Revisions* to further study the application of the broker reporting rules to non-custodial industry participants, the Treasury Department and the IRS have determined that the definition of PDAP and the definition of a sale effected by a PDAP (PDAP sales) in these final regulations should apply only to transactions in which PDAPs take possession of the digital asset payment. Additionally, given the complexity of the multi-part definition of PDAP in the proposed regulations and in response to the public comments, the Treasury Department and the IRS have determined that all types of payment transactions that were included in the various subparagraphs of the definition should be combined into a single simplified definition. This single definition includes the requirement that a person must receive the digital assets in order to be a PDAP and also covers all transactions—and not just those transactions described in proposed § 1.6045–1(a)(22)(i)(B) and (C)—in which the PDAP receives a digital asset and transfers that same digital asset to the second party.

Accordingly, final § 1.6045–1(a)(22) defines a PDAP as a person who in the ordinary course of a trade or business stands ready to effect sales of digital assets by regularly facilitating payments from one party to a second party by receiving digital assets from the first party and paying those digital assets, cash, or different digital assets to the second party. Correspondingly, final § 1.6045–1(a)(9)(ii)(D) revises and simplifies the proposed regulation's definition of a sale processed by a PDAP to include the payment by a party of a digital asset to a PDAP in return for the payment of that digital asset, cash, or a different digital asset to a second party. Accordingly, if a buyer uses a stablecoin or other digital asset to make payment to a PDAP that then transfers the stablecoin, another digital asset, or cash to the merchant, the transaction is a PDAP sale. Additionally, as discussed in Part I.D.4. of this *Summary of Comments and Explanation of Revisions*, the final regulations provide that any PDAP sale that is also a sale under one of the other definitions of

sale under final § 1.6045–1(a)(9)(ii)(A) through (C) (non-PDAP sale) that is subject to reporting due to the broker effecting the sale as a broker other than as a PDAP must be treated as a non-PDAP sale. Thus, for example, an exchange of digital assets that a custodial broker executes between customers will not be treated as a PDAP sale, but instead will be treated as a sale of digital assets in exchange for different digital assets under final § 1.6045–1(a)(9)(ii)(A)(2).

One comment recommended that the regulations be clarified so as not to treat the PDAP as a broker to the extent it does not have sufficient information about the transaction to know it is a sale. Another comment stated that PDAPs do, in fact, maintain detailed records of all transactions for both merchants and buyers. The final regulations adopt this comment by adding services performed by a PDAP to the definition of facilitative service provided the PDAP has actual knowledge or ordinarily would know the nature of the transaction and the gross proceeds therefrom to ensure that payments made using digital assets are treated as sales effected by a broker. Final § 1.6045–1(a)(21)(iii)(B)(4). Accordingly, in a circumstance in which the PDAP processes a payment on behalf of a merchant and that payment comes from a buyer with an account at the PDAP, the PDAP would ordinarily have the information necessary to know that the transaction constitutes a sale and would know the gross proceeds. As such, that PDAP will be treated under the final regulations as effecting the sale transaction under § 1.6045–1(a)(10)(i)(D) for the buyer-customer as a digital asset middleman under § 1.6045–1(a)(21). In contrast, in a circumstance in which the PDAP does not process the payment on behalf of the merchant, the PDAP would ordinarily not have actual knowledge or other information that would allow the processor to ordinarily know the nature of the transaction. Accordingly, assuming nothing else about the transaction provides the PDAP with either actual knowledge or information that would allow the processor to ordinarily know the nature of the transaction, the payment processor would not be treated as providing a facilitative service that effects a sale transaction under these regulations.

One comment stated that PDAPs do not have the infrastructure to collect and store customer identification information or to report transactions involving buyers who do not have accounts with the PDAP. Another comment expressed concern about

asking individuals to provide personal identifying information to PDAPs, which could occur in the middle of a busy store. Another comment requested guidance on how PDAPs should collect sensitive taxpayer information. Several comments expressed concern about the increased risk these rules would create with respect to the personal identifying information collected by PDAPs because that information could be held by multiple brokers. Several other comments stated that extending information reporting to PDAPs would create surveillance concerns because it could allow the IRS to collect data on merchandise or services purchased or provided.

The Treasury Department and the IRS understand that PDAPs that comply with FinCEN and other regulatory requirements are required to collect and in some cases report customer identification information, and have concluded that such PDAPs will likewise be able to implement the systems necessary to, or contract with service providers who can, protect sensitive information of their customers. It is appropriate to have PDAPs collect, store, and report customer identification information for Federal tax purposes because reporting on digital asset payment transactions is important to closing the income tax gap attributable to digital asset transactions. Indeed, reporting is particularly helpful to buyers in these payment transactions because they may not understand that the use of digital assets to make payments is a transaction that may generate a taxable gain or loss. Finally, the final regulations do not require the reporting of any information regarding the specific services or products purchased by buyers in payment transactions. Accordingly, the IRS could not use this information reporting to track or monitor the types of goods and services a taxpayer purchases using digital assets.

c. Other PDAP Issues

Comments also raised various other policy and practical objections to including PDAPs in the definition of broker. Specifically, comments suggested that requiring PDAPs to collect tax documentation information for all purchases may halt the development of digital assets as an efficient and secure payment system or may drive customers to not use PDAPs to make their payments, potentially exposing them to more fraud by unscrupulous merchants. Other comments complained that these rules would punish buyers who choose to pay with digital assets and confuse buyers

paying with stablecoins, who expect transactions to be no different than cash transactions. Several comments asserted that the benefits of having PDAPs report on digital asset payments made by buyers was not worth the cost because most tax software programs are able to track and report accurately the gains and losses realized in connection with these payment transactions. These comments asserted that for taxpayers already taking steps to comply with their Federal income tax obligations, an information reporting regime that provides only gross proceeds information with respect to these transactions would not produce particularly useful information. Even for other taxpayers, another comment suggested that reporting by PDAPs provided only limited utility because determining a gain or loss on each purchase would still involve a separate search for cost basis information.

The final regulations do not adopt these comments. Information reporting facilitates the preparation of Federal income tax returns (and reduces the number of inadvertent errors or intentional misstatements shown on those returns) by taxpayers who engage in digital asset transactions. Information reporting is particularly important in the case of payment transactions involving the disposition of digital assets, which many taxpayers do not realize must be reported on their Federal income tax returns. Clear information reporting rules also helps the IRS to identify taxpayers who have engaged in these transactions, and thereby help to reduce the overall income tax gap. Moreover, regarding the impact of these regulations on the development of digital assets as an efficient and secure payment system, the final regulations will assist digital asset owners who are currently forced to closely monitor and maintain records of all their digital asset transactions to correctly report their tax liability at the end of the year because they will receive the necessary information from the processor of the transactions. Eliminating these high entry costs may allow more potential digital asset owners with little experience accounting for dispositions of digital assets in payment transactions to enter the market.

Several comments recommended against having PDAPs report on buyers disposing of digital assets because these PDAPs already report on merchants who receive these payments under section 6050W to the extent the payments are for goods or services. These comments raised concerns that this duplicative reporting for the same transaction

would harm the IRS, create an undue burden for brokers, and cause confusion for buyers making payments. The final regulations do not adopt these comments because the reporting is not duplicative. The reporting under section 6050W reports on payments made to the merchant. That reporting is not provided to the buyers making those payments, and therefore does not address the gross proceeds that the buyer must report on the buyer's Federal income tax returns.

Another comment suggested that the treatment of digital asset payments should be analogous to that of cash payments. That is, since PDAPs are not required to report on buyers making cash payments, they should not be required to report on buyers making payments with digital assets. The final regulations do not adopt this comment because a buyer making a cash payment does not have a taxable transaction while a buyer making a payment with digital assets is engaging in a sale or exchange that requires the buyer to report any gain or loss from the disposition on its Federal income tax return.

Other comments raised the concern that reporting by PDAPs would result in duplicative reporting to the buyer because the buyer's wallet provider or another digital asset trading platform may report these transactions. See Part I.B.5. of this *Summary of Comments and Explanation of Revisions* for a discussion of how the multiple broker rules provided in these final regulations would apply to PDAPs.

Another comment recommended only subjecting PDAPs to broker reporting if they exchange digital assets into fiat currency. The final regulations do not adopt this comment because digital assets are a unique form of property which can be used to make payments. Accordingly, given that digital assets are becoming a more popular form of payment, it is important that taxpayers making payments with digital assets be provided the information they need to report these transactions on their Federal income tax returns.

Notwithstanding that the final regulations require PDAPs to report on PDAP sales, as discussed in Part I.D.2. of this *Summary of Comments and Explanation of Revisions*, the final regulations provide a \$10,000 *de minimis* threshold for qualifying stablecoins below which PDAPs will not have to report PDAP sales using qualifying stablecoins. Additionally, the Treasury Department and the IRS have determined that, pursuant to discretion under section 6045(a), it is appropriate to provide additional reporting relief for

certain low-value PDAP sales using digital assets other than qualifying stablecoins that are less likely to give rise to significant gains or losses. As discussed in Part I.D.4. of this *Summary of Comments and Explanation of Revisions*, the final regulations have added a *de minimis* annual threshold for PDAP sales below which no reporting is required.

3. Issuers of Digital Assets

Proposed § 1.6045–1(a)(1) modified the definition of *broker* to include persons that regularly offer to redeem digital assets that were created or issued by that person, such as in an initial coin offering or redemptions by an issuer of a so-called stablecoin. One comment focused on stablecoin issuers and recommended against treating such issuers as brokers because it is unclear how they would be in a position to know the gain or loss of their customers. Issuers of digital assets that regularly offer to redeem those digital assets will know the nature of the sale and the gross proceeds from the sale when they redeem those digital assets.

Accordingly, it is appropriate to treat these issuers as brokers required to report the gross proceeds of the redemption just as obligors that regularly issue and retire their own debt obligations are treated as brokers and corporations that regularly redeem their own stock also are treated as brokers under § 1.6045–1(a)(1) of the pre-2024 final regulations. Moreover, since these issuers do not provide custodial services for their customers redeeming the issued digital assets, they are not required to report on the customer's adjusted basis under final § 1.6045–1(d)(2)(i)(D). As such whether they are able to know their customer's gain or loss is not relevant to whether they should be treated as brokers under these regulations.

4. Real Estate Reporting Persons

The proposed regulations provided that a real estate reporting person is a broker with respect to digital assets used as consideration in a real estate transaction if the reporting person would generally be required to make an information return with respect to that transaction under proposed § 1.6045–4(a). To ensure that real estate reporting persons report on real estate buyers making payment in such transactions with digital assets, the proposed regulations also included these real estate buyers in the definition of customer and included the services performed with respect to these transactions by real estate reporting persons in the definition of facilitative

services relevant to the definition of a digital asset middleman.

One comment raised the concern that in some real estate transactions, direct (peer to peer) payments of digital assets from buyers to sellers may not be reflected in the contract for sale. In such transactions, the real estate reporting person would not ordinarily know that the buyers used digital assets to make payment. The Treasury Department and the IRS have concluded that it is not appropriate at this time to require real estate reporting persons who do not know or would not ordinarily know that digital assets were used by the real estate buyer to make payment to report on such payments. Accordingly, the definition of facilitative service in final § 1.6045-1(a)(21)(iii)(B)(2) has been revised to limit the services provided by real estate reporting persons that constitute facilitative services to those services for which the real estate reporting person has actual knowledge or ordinarily would know that digital assets were used by the real estate buyer to make payment directly to the real estate seller. For this purpose, a real estate reporting person is considered to have actual knowledge that digital assets were used by the real estate buyer to make payment if the terms of the real estate contract provide for payment using digital assets. Thus, for example, if the contract for sale states that the buyer will make payment using digital assets, either fixed as to number of units or fixed as to the value, the real estate reporting person would be treated as having actual knowledge that digital assets were used to make payment in the transaction notwithstanding that such person might have to query the buyer and seller regarding the name and number of units used to make payment. Additionally, a separate communication to the real estate reporting person, for example, to ensure that the value of the digital asset payment is reflected in any commissions or taxes due at closing, would constitute actual knowledge by the real estate reporting person that digital assets were used by the real estate buyer to make payment directly to the real estate seller.

One comment recommended that to relieve burden on the real estate reporting person, the form on which the real estate seller's gross proceeds are reported (Form 1099-S, *Proceeds From Real Estate Transactions*) be revised with a check box to indicate that digital assets were paid in the transaction and with a new box for the buyer's name, address, and tax identification number (TIN). These revisions would allow the real estate reporting person to file one Form 1099-S instead of one Form 1099-

DA (with respect to the real estate buyer) and one Form 1099-S (with respect to the real estate seller). The final regulations do not make this suggested change because it would be inappropriate to include both parties to the transaction on the same information return. The broker reporting regulations require copies of Form 1099-S to be furnished to the taxpayer, and it would be inappropriate to require disclosure of either party's TIN to the other. For a discussion of how the multiple broker rule would apply to a real estate transaction involving a real estate reporting person and a PDAP, see Part I.B.5. of this *Summary of Comments and Explanation of Revisions*.

Notwithstanding these decisions regarding the appropriateness of reporting under these regulations by real estate reporting persons, as discussed in Part VII. Of this *Summary of Comments and Explanation of Revisions*, the applicability date for reporting has been delayed and backup withholding relief has been provided for real estate reporting persons.

5. Exempt Recipients and the Multiple Broker Rule

a. Sales Effected for Exempt Recipients

The proposed regulations left unchanged the exceptions to reporting provided under § 1.6045-1(c)(3)(i) of the pre-2024 final regulations for exempt recipients, such as certain corporations, financial institutions, tax exempt organizations, or governments or political subdivisions thereof. Thus, the proposed regulations did not create a reporting exemption for sales of digital assets effected on behalf of a customer that is a digital asset broker. Several comments recommended that custodial digital asset brokers be added to the list of exempt recipients under the final regulations because the comments asserted that these brokers are subject to rigorous oversight by numerous Federal and State regulators. In response to the request that custodial digital asset brokers be added to the list of exempt recipients, final § 1.6045-1(c)(3)(i)(B)(12) adds digital asset brokers to the list of exempt recipients for sales of digital assets, but limits such application to only U.S. digital asset brokers because brokers that are not U.S. digital asset brokers (non-U.S. digital asset brokers) are not currently subject to reporting on digital assets under these final regulations. See Part I.G. of this *Summary of Comments and Explanation of Revisions* for the definition of a U.S. digital asset broker and a discussion of the Treasury Department's and the IRS's plans to

implement the CARF. Additionally, the list also does not include U.S. digital asset brokers that are registered investment advisers that are not otherwise on the list of exempt recipients (§ 1.6045-1(c)(3)(i)(B)(1) through (11) of the pre-2024 final regulations) because registered investment advisers were not previously included in the list of exempt recipients. For this purpose, a registered investment adviser means a registered investment adviser registered under the Investment Advisers Act of 1940, 15 U.S.C. 80b-1, *et seq.*, or as a registered investment adviser with a state securities regulator. See Part I.B.5.b. of this *Summary of Comments and Explanation of Revisions* for the documentation that a broker effecting a sale on behalf of a U.S. digital asset broker (other than a registered investment adviser) must obtain pursuant to final § 1.6045-1(c)(3)(i)(C)(3) to treat such customer as an exempt recipient under final § 1.6045-1(c)(3)(i)(B)(12).

b. The Multiple Broker Rule

The proposed regulations also did not extend the multiple broker rule under § 1.6045-1(c)(3)(iii) of the pre-2024 final regulations to digital asset brokers. Comments overwhelmingly requested that the final regulations implement a multiple broker rule applicable to digital asset brokers to avoid burdensome and confusing duplicative reporting. Several comments recommended that the rule in § 1.6045-1(c)(3)(iii) of the pre-2024 final regulations, which provides that the broker that submits instructions to another broker, such as a digital asset trading platform, should have the obligation to report the transaction to the IRS, not the broker that receives the instructions and executes the transaction, because the brokers that submit instructions are in a position to provide reporting information to those clients with whom they maintain a direct relationship, while the latter are not. Another comment recommended requiring only the digital asset broker that has the final ability to consummate the sale to report the transaction to the IRS unless that broker has no ability to backup withhold. Another comment recommended allowing digital asset brokers to enter into contracts for information reporting to establish who is responsible for reporting the transaction to the IRS. Finally, several comments recommended that, when two digital asset brokers would otherwise have a reporting obligation with respect to a sale transaction, that only the digital asset broker crediting

the gross proceeds to the customer's wallet address or account have the obligation to report the transaction to the IRS because this is the broker that has the best ability to backup withhold.

As discussed in Part VI. Of this *Summary of Comments and Explanation of Revisions*, backup withholding on these transactions is a necessary and essential tool to ensure that important information for tax enforcement is reported to the IRS. Because the broker crediting the gross proceeds to the customer's wallet address or account is in the best position to backup withhold on these transactions if the customer does not provide the broker with the necessary tax documentation, final § 1.6045-1(c)(3)(iii)(B) adopts a multiple broker rule for digital asset brokers that would require the broker crediting the gross proceeds to the customer's wallet address or account to report the transaction to the IRS when more than one digital asset broker would otherwise have a reporting obligation with respect to a sale transaction. The relief for the broker that is not the broker crediting the gross proceeds to the customer's wallet address or account, however, is conditioned on that broker obtaining proper documentation from the other broker as discussed in the next paragraph. Additionally, the final regulations do not adopt the suggested rule that would allow a broker to shift the responsibility to report to another broker based on an agreement between the brokers because the broker having the obligation to report in that case may not have the ability to backup withhold. A broker, of course, is not prohibited from contracting with another broker or with another third party to file the required returns on its behalf.

Numerous comments provided recommendations in response to the request in the proposed regulations for suggestions to ensure that a digital asset broker would know with certainty that the other digital asset broker involved in a transaction is also a broker with a reporting obligation under these rules. One comment raised a concern with a rule requiring the broker obligated to report to provide notice to the other broker that it will make a return of information for each sale because that requirement would be overly burdensome. Another comment recommended that the broker obtain from the obligated broker a Form W-9 that has been modified to add an exempt payee code for digital asset brokers and a unique broker identification number. Another comment recommended that, absent actual knowledge to the contrary, a

broker should be able to rely on a reasonable determination based on another broker's name or other publicly available information it has about the other broker (sometimes referred to as the eye-ball test) that the other broker is a U.S. digital asset broker. To avoid any gaps in reporting, another comment recommended against allowing brokers to treat other brokers as U.S. digital asset brokers based on actual knowledge or the existing presumption rules. Finally, another comment recommended that the IRS establish a registration system and searchable database for digital asset brokers like that used for foreign financial institutions under the provisions commonly known as the Foreign Account Tax Compliance Act (FATCA) of the Hiring Incentives to Restore Employment Act of 2010, Public Law 111-147, 124 Stat. 71 (March 18, 2010).

Because of the risk that the multiple broker rule could result in no reporting, the final regulations do not adopt the so-called eye-ball test or the existing presumption rules for determining if another broker is a U.S. digital asset broker. The final regulations also do not adopt an IRS registration system for U.S. digital asset brokers because the IRS is still considering the benefits and burdens of a registration system for both the IRS and brokers. Instead, the final regulations adopt a rule that to be exempt from reporting under the multiple broker rule, a broker must obtain from another broker a Form W-9 certifying that the other broker is a U.S. digital asset broker (other than a registered investment adviser that is not otherwise on the list of exempt recipients (§ 1.6045-1(c)(3)(i)(B)(1) through (11) of the pre-2024 final regulations). Because the current Form W-9 does not have this certification, the notice referred to in Part VII. Of this *Summary of Comments and Explanation of Revisions* will permit brokers to rely upon a written statement that is signed by another broker under penalties of perjury that the other broker is a U.S. digital asset broker until sometime after the Form W-9 is revised to accommodate this certification. It is contemplated that the instructions to the revised Form W-9 will give brokers who have obtained private written certifications a reasonable transition period before needing to obtain a revised Form W-9 from the other broker.

One comment requested clarification regarding which broker—the real estate reporting person or the PDAP—is responsible for filing a return with respect to the real estate buyer in a transaction in which the real estate

buyer transfers digital assets to a PDAP that in turn transfers cash to the real estate seller. The multiple broker rule included in final § 1.6045-1(c)(3)(iii)(B) would apply in this case if the real estate reporting person is aware that the PDAP was involved to make the payment on behalf of the real estate buyer and obtains from the PDAP the certification described above that the PDAP is a U.S. digital asset broker. If the transaction is undertaken in any other way, it is unclear that the real estate reporting person would know the identity of the PDAP or whether that PDAP was required to report on the transaction. Accordingly, the real estate reporting person would be required to report on the transaction without regard to whether the PDAP also is required to report. It is anticipated that taxpayers will only rarely receive two statements regarding the same real estate transaction; however, when they do, taxpayers will be able to inform the IRS should the IRS inquire that the two statements reflect only one transaction.

Another comment requested guidance on how the information reporting rules would work with respect to a digital asset hosted wallet provider that contracts with another business to perform the hosted wallet services for the broker's customers on the broker's behalf. In response to the comment, the final regulations clarify that a broker should be treated as providing hosted wallet services even if it hires an agent to perform some or all of those services on behalf of the broker and without regard to whether that hosted wallet service provider is also in privity with the customer. Additionally, to ensure this interpretation is incorporated in the final regulations, the final regulations revise the definition of covered security in final § 1.6045-1(a)(15)(i)(I) to reference brokers that provide custodial services for digital assets, rather than hosted wallet services for digital assets, to clarify that services provided by the brokers' agents will be ascribed to the broker without regard to the specific custodial method utilized. To the extent a hosted wallet provider acts as an agent of the broker and is in privity with the customer, the multiple broker rules described herein should avoid duplicative reporting.

Finally, as discussed in Part I.B.1. of this *Summary of Comments and Explanation of Revisions*, the Treasury Department and the IRS are continuing to study the question of how a multiple broker rule would apply to the non-custodial digital asset industry.

C. Definition of Sales Subject to Reporting

1. In General

The proposed regulations modified the definition of a *sale* subject to reporting to include the disposition of a digital asset in exchange for cash, one or more stored-value cards, or a different digital asset. In addition, the proposed regulations included in the definition of sale the disposition of a digital asset by a customer in exchange for property (including securities and real property) of a type that is subject to reporting under section 6045 or in consideration for the services of a broker. Finally, the proposed regulations provided that a sale includes certain digital asset payments by a customer that are processed by a PDAP.

Several comments recommended that the definition of sale not include exchanges of digital assets for different digital assets or certain other property because such reporting would be impractical for brokers, confusing for taxpayers, and not consistent with the reporting rules for non-digital assets. Another comment recommended limiting reporting to off-ramp transactions, which signify the taxpayer's exit from an investment in digital assets. In contrast, another comment supported the requirement for information reporting on exchanges of digital assets for different digital assets because taxpayers must report all taxable gain or loss transactions of this type that occur within their taxable year.

The final regulations do not adopt the comments to limit the definition of sale to cash transactions. Digital assets are unique among the types of assets that are subject to reporting under section 6045 because they are commonly exchanged for different digital assets in trading transactions, for example an exchange of bitcoin for ether. Some digital assets can readily function as a payment method and, as such, can also be exchanged for other property in payment transactions. As explained in Notice 2014–21, and clarified in Revenue Ruling 2023–14, 2023–33 I.R.B. 484 (August 14, 2023), the sale or exchange of a digital asset that is property has tax consequence that may result in a tax liability. Thus, when a taxpayer disposes of a digital asset to make payment in another transaction, the taxpayer has engaged in two taxable transactions: the first being the disposition of the digital asset and the second being the payment associated with the payment transaction. In contrast, when a taxpayer disposes of cash to make payment, the taxpayer has,

at most, only one taxable transaction. Accordingly, these regulations require reporting on sales and certain exchanges of digital assets because substantive Federal tax principles do not treat the use of digital assets to make payments in the same way as the use of cash to make payments.

Unlike digital assets, traditional financial assets subject to broker reporting are generally disposed of for cash. That is why the definition of sale in § 1.6045–1(a)(9)(i) only requires reporting for cash transactions. In contrast, the barter exchange rules in § 1.6045–1(e) do require reporting on property-for-property exchanges because the barter industry, by definition, applies to property-for-property exchanges and not only cash transactions. Accordingly, the modified definition of sale for digital assets exchanged for other property reflects the differences in the underlying transactions as compared to traditional financial assets, not the disparate treatment of similarly situated transactions based solely on technological differences. Moreover, the purpose behind information reporting is to make taxpayers aware of their taxable transactions so they can report them accurately on their Federal income tax returns and to make those transactions more transparent to the IRS to reduce the income tax gap.

Another comment raised a concern that including exchanges of digital assets for property and services exceeded the authority provided to the Secretary by the Infrastructure Act. The Treasury Department and the IRS do not agree with this comment. The term “sale” is not used in section 6045(a), which provides broadly that the Secretary may publish regulations requiring returns by brokers with details regarding gross proceeds and other information the Secretary may require by forms or regulations. Nothing in section 6045 limits “gross proceeds” to the results of a sale rather than an exchange and the term sale was first defined in the regulations under section 6045 long before the enactment of the Infrastructure Act. Moreover, the Infrastructure Act modified the definition of broker to include certain persons who provide services effectuating transfers of digital assets, which are part of any exchange of digital assets. Accordingly, the changes made by the Infrastructure Act do not provide any limitations on how the Secretary can define the term when applied to the digital asset industry. Another comment suggested that treating the exchange of digital assets for other digital assets or services as a

taxable event is impractical and harmful to taxpayers, and that digital assets should be subject to tax only when taxpayers sell those assets for cash. See Part II.A. of this *Summary of Comments and Explanation of Revisions* for discussion of that issue.

2. Definition of Dispositions

Several comments raised questions about whether the definition of sale, which includes any disposition of a digital asset in exchange for a different digital asset, applies to certain dispositions that may or may not be taxable. For this reason, several comments recommended that the final regulations not require reporting on certain transactions until substantive guidance is issued on the tax treatment of those transactions. One comment specifically mentioned reporting should not be applied to transactions involving what it referred to as the “wrapping” or “unwrapping” of tokens for the purpose of obtaining a token that is otherwise like the disposed-of token in order to use the received token on a particular blockchain. In contrast, another comment suggested that the final regulations should require reporting wrapping and unwrapping transactions. One comment suggested that exchanges of digital assets involving “liquidity pool” tokens should also be subject to reporting under the final regulations. Another comment suggested that the final regulations provide guidance on whether reporting is required on exchanges of digital assets for liquidity pool or “staking pool” tokens because these transactions typically represent contributions of tokens when the contributor's economic position has not changed. This comment also suggested, if these contributions are excluded from reporting, that the Treasury Department and the IRS study how information reporting rules apply when the contributors are “rewarded” for these “contributions” or when they receive other digital assets in exchange for the disposition of these pooling tokens. Another comment recommended, instead, that the final regulations explicitly address the information reporting requirements associated with staking rewards and hard forks and recommended that they should be treated like taxable stock dividends for reporting purposes. Another comment recommended that the final regulations address whether digital asset loans and short sales of digital assets will be subject to reporting. The comment expressed the view that the substantive tax treatment of such loans is unresolved, and further suggested that the initial exchange of a digital asset for

an obligation to return the same or identical digital asset and the provision of cash, stablecoin, or other digital asset collateral in the future may well constitute a disposition and, in the absence of a statutory provision like section 1058 of the Code, may be taxable.

The Treasury Department and the IRS have determined that certain digital asset transactions require further study to determine how to facilitate appropriate reporting pursuant to these final regulations under section 6045. Accordingly, in response to these comments, Notice 2024–57 is being issued with these final regulations that will provide that until a determination is made as to how the transactions identified in the notice should be reported, brokers are not required to report on these identified transactions, and the IRS will not impose penalties for failure to file correct information returns or failure to furnish correct payee statements with respect to these identified transactions.

One comment recommended that an exchange of digital assets for governance tokens or any other exchange for tokens that could be treated as a contribution to an actively managed partnership or association also be excluded from reporting under section 6045 until the substantive Federal tax consequences of these contributions are addressed in guidance. The final regulations do not adopt this recommendation. Whether exchanges of digital assets for other digital assets could be treated as a contribution to a partnership or association is outside the scope of these regulations. Additionally, because the potential for duplicate reporting also exists for non-digital asset partnership interests, Treasury Department and the IRS have concluded that different rules should not apply to sales of digital asset partnership interests. Finally, the more general question of whether reporting on partnership interests (in digital asset form or otherwise) under section 6045 is appropriate in light of the potential for duplicate reporting is outside the scope of this regulations project.

The preamble to the proposed regulations requested comments regarding whether the broker reporting regulations should apply to include initial coin offerings, simple agreements for future tokens, and similar contracts, but did not propose such reporting. One comment recommended that initial coin offerings, simple agreements for future tokens, and similar contracts should be covered by broker reporting under the final regulations while another comment asserted that this reporting would not be feasible. Upon

consideration of the comments, the Treasury Department and the IRS have determined that the issues raised by these comments require further study. Accordingly, the final regulations do not adopt the comment's recommendations. However, the Treasury Department and the IRS may consider publishing additional guidance that could require broker reporting for such transactions.

3. Exceptions for Certain Closed Loop Transactions

As discussed in Part I.A.3. of this *Summary of Comments and Explanation of Revisions* with respect to closed loop digital assets, the Treasury Department and the IRS do not intend the information reporting rules under section 6045 to apply to the types of virtual assets that exist only in a closed system and cannot be sold or exchanged outside that system for fiat currency. Rather than carve these assets out from the definition of a digital asset, however, the final regulations add these closed loop transactions to the list of excepted sales that are not subject to reporting under final § 1.6045–1(c)(3)(ii). Inclusion on the list of excepted sales is not intended to create an inference that the transaction is a sale of a digital asset under current law. Instead, inclusion on the list merely means that the Treasury Department and the IRS have determined that information reporting on these transactions is not appropriate at this time.

One comment recommended that the definition of digital assets be limited to exclude from reporting transactions involving dispositions of NFTs used by loyalty programs. The comment explained that these loyalty programs do not permit customers to transfer their digital asset tokens by sale or gift outside of the program's closed (that is, permissioned) distributed ledger. The final regulations add these loyalty program transactions to the list of excepted sales for which reporting is not required. This exception is limited, however, to those programs that do not permit customers to transfer, exchange, or otherwise use, the tokens outside of the program's closed distributed ledger network because tokens that have a market outside the program's closed network raise Federal tax issues similar to those with other digital assets that are subject to reporting.

Another comment recommended that video game tokens that owners have only a limited ability to sell outside the video game environment be excluded from the definition of digital assets because sales of these tokens represent a low risk of meaningful Federal tax

non-compliance. The final regulations do not treat sales of video game tokens that can be sold outside the video game's closed environment as excepted sales. Instead, as with the loyalty program tokens, the final regulations limit the excepted sale treatment to only those dispositions of video game tokens that are not capable of being transferred, exchanged, or otherwise used, outside the closed distributed ledger environment.

Several comments requested that the final regulations exclude from reporting transactions involving digital representations of assets that may be transferred only within a fixed network of banks using permissioned distributed ledgers to communicate payment instructions or other back-office functions. According to these comments, bank networks use digital assets as part of a messaging service. The comments noted that these digital assets have no intrinsic value, function merely as a tool for recordkeeping, and are not freely transferable for cash or other digital assets outside the system. To address these transactions, one comment recommended that the definition of digital asset be limited to only those digital assets that are issued and traded on permissionless (that is, open to the public) distributed ledgers. Other comments requested that the exception apply to permissioned interoperable distributed ledgers, that is, digital assets that can travel from one permissioned distributed ledger (for example, at one bank) to another permissioned distributed ledger (at another bank).

The Treasury Department and the IRS are concerned that a broadly applicable restriction on the definition of digital assets could inadvertently create an exception for other digital assets that could be involved in transactions that give rise to taxable gain or loss. Accordingly, to address these comments, the final regulations add certain transactions within a single cryptographically secured distributed ledger, or network of interoperable distributed ledgers, to the list of excepted sales for which reporting is not required. Specifically, final § 1.6045–1(c)(3)(ii)(G) provides that an excepted sale includes the disposition of a digital asset representing information with respect to payment instructions or the management of inventory that does not consist of digital assets, which in each case does not give rise to sales of other digital assets within a cryptographically secured distributed ledger (or network of interoperable distributed ledgers) if access to the distributed ledgers (or network of interoperable distributed

ledgers) is restricted to only users of such information and if the digital assets disposed of are not capable of being transferred, exchanged, or otherwise used, outside such distributed ledger or network. No inference is intended that such transactions would otherwise be treated as sales of digital assets. This exception, however, does not apply to sales of digital assets that are also sales of securities or commodities that are cleared or settled on a limited-access regulated network subject to the coordination rule in final § 1.6045–1(c)(8)(iii). See Part I.A.4.a. of this *Summary of Comments and Explanation of Revisions* for an explanation of the special coordination rule applicable to securities or commodities that are cleared or settled on a limited-access regulated network.

The final regulations also include a general exception for closed-loop transactions in order to address other such transactions not specifically brought to the attention of the Treasury Department and the IRS. Because the Treasury Department and the IRS do not have the information available to evaluate those transactions, this exception applies only to a limited class of digital assets. The digital assets must be offered by a seller of goods or provider of services to its customers and exchangeable or redeemable only by those customers for goods or services provided by such seller or provider, and not by others in a network. In addition, the digital asset may not be capable of being transferred, exchanged, or otherwise used outside the cryptographically secured distributed ledger network of the seller or provider and also may not be sold or exchanged for cash, stored-value cards, or stablecoins at a market rate inside the seller or provider's distributed ledger network.

The treatment of closed-loop transactions as excepted sales discussed here is not intended to be broadly applicable to any digital asset sold within a permissioned distributed ledger network because such a broad exception could generate incentives for the creation of distributed ledger networks that are nominally permissioned but are, in fact, open to the public. If similar digital assets that cannot be sold or exchanged outside of a controlled, permissioned ledger and that do not raise new tax compliance concerns are brought to the attention of the Treasury Department and the IRS, transactions involving those digital assets may also be designated as excepted sales under final § 1.6045–1(c)(3)(ii)(A).

4. Other Exceptions

One comment requested that utility tokens that are limited to a particular timeframe or event be treated like closed system tokens. The final regulations do not adopt this suggestion because not enough information was provided for the Treasury Department and the IRS to determine whether these tokens are capable of being transferred, exchanged, or otherwise used, outside of the closed distributed ledger environment. Another comment requested that digital assets used for test purposes be excluded from the definition of digital assets.

According to this comment, test blockchain networks allow users to receive digital assets for free or for a nominal fee as part of the creation and testing of software. These networks have sunset dates beyond which the digital assets created cannot be used. The final regulations do not adopt this comment because not enough information was provided to know if these networks are closed distributed ledger environments or if the tokens are capable of being transferred, exchanged, or otherwise used, prior to the network's sunset date.

One comment requested that the final regulations be revised to prevent the application of cascading transaction fees in a sale of digital assets for different digital assets when the broker withholds the received digital assets to pay for such fees. For example, a customer exchanges one unit of digital asset AB for 100 units of digital asset CD (first transaction), and to pay for the customer's digital asset transaction fees, the broker withholds 10 percent (or 10 units) of digital asset CD. The comment recommended that the sale of the 10 units of CD in the second transaction be allocated to the original transaction and not be separately reported. The Treasury Department and the IRS have determined that a limited exception from the definition of sale should apply to cascading digital asset transaction fees. Specifically, final § 1.6045–1(c)(3)(ii)(C) excepts a sale of digital asset units withheld by the broker from digital assets received by the customer in any underlying digital asset sale to pay for the customer's digital asset transaction costs. The special specific identification rule in final §§ 1.6045–1(d)(2)(ii)(B)(3) and 1.1012–1(j)(3)(iii) ensures that the sale of the withheld units does not give rise to gain or loss. See Part VI.B. of this *Summary of Comments and Explanation of Revisions* for a discussion of the application of this excepted sales rule when the sale of such withheld units gives rise to an obligation by the broker under section 3406 to deduct and withhold a tax.

D. Information To Be Reported for Digital Asset Sales

1. In General

The proposed regulations required that for each digital asset sale for which a broker is required to file an information return, the broker report, among other things, the date and time of such sale set forth in hours, minutes, and seconds using Coordinated Universal Time (UTC). The proposed regulations requested comments regarding whether UTC time was appropriate and whether a 12-hour clock or a 24-hour clock should be used for this reporting. Some comments agreed with reporting the time of sale based on UTC time; however, other comments suggested using the customer's local time zone as configured on the platform or in the wallet. Other comments suggested that it is not technologically or operationally feasible to use the time zone of the customer's domicile. Another comment raised the concern that reporting in different time zones from the broker's time zone would make the broker and the IRS unable to reconcile backup withholding, timely tax deposits, and other annual filings. Still other comments requested broker flexibility in reporting the time of sale, provided the broker reported the time of the customer's purchases and sales consistently. Several other comments raised the concern that reporting on the time of transaction was excessively burdensome due to the number of tax lots that the broker's customers could potentially acquire and sell in a single day. Another comment suggested that the information reported with respect to the time of the transaction should be the same as the information reported on the Form 1099–B for traditional asset sales unless there is a compelling reason to do otherwise. Additionally, several comments suggested that the burden of developing or modifying systems to report the time of sale was not warranted because the time of sale within a date (that is reported) does not generally impact customer holding periods if the broker treats the time zone of purchases and sales consistently.

The final regulations adopt the recommendation to remove the requirement to report the time of the transaction. The Treasury Department and the IRS are concerned about the burdensome nature of the time reporting requirement and the administrability of reconciling different times for customer transactions and backup withholding deposits. Additionally, the issues raised by the time of sale with respect to digital asset year-end transactions are

generally the same as for traditional asset sales. It is expected that brokers will determine the date of purchase and date of sale of a customer's digital assets based on a consistent time zone so that holding periods are reported consistently, and that brokers will provide customers with the information necessary for customers to report their year-end sale transactions accurately.

The proposed regulations also required that, for each digital asset sale for which a broker is required to file an information return and for which the broker effected the sale on the distributed ledger, the broker report the transaction identification (transaction ID or transaction hash) associated with the digital asset sale and the digital asset address (or digital asset addresses if multiple) from which the digital asset was transferred in connection with the sale. Additionally, for transactions involving sales of digital assets that were previously transferred into the customer's hosted wallet with the broker (transferred-in digital asset), the proposed regulations required the broker to report the date and time of such transferred-in transaction, the transaction ID of such transfer-in transaction, the digital asset address (or digital asset addresses if multiple) from which the transferred-in digital asset was transferred, and the number of units transferred in by the customer as part of that transfer-in transaction. Numerous comments raised privacy and surveillance concerns associated with the requirement to report transaction ID and digital asset address information. These comments noted that a person or entity who knows the digital asset address of another gains access not only to that other user's purchases and exchanges on a blockchain network, but also the entire transaction history associated with that user's digital asset address. One comment expressed concern that reporting transaction ID and digital asset addresses would link the transaction history of the reported digital asset addresses to the taxpayer, thus exposing the financial and spending habits of that taxpayer. Other comments expressed that reporting this information also creates a risk that the information could be intercepted by criminals who could then attempt to extort or otherwise gain access to the private keys of identified persons with digital asset wealth. In short, many comments expressed strongly stated views that requiring this information creates privacy, safety, and national security concerns and could imperil U.S. citizens.

Other comments suggested that the information reporting rules should

balance the IRS's need for transparency with the taxpayer's interest in privacy. Thus, reporting of transaction IDs and digital asset addresses should not be required because the information exceeds the information that the IRS needs to confirm the value of reported gross proceeds and cost basis information. Further, another comment asserted that the IRS does not need transaction ID and digital asset address information because the IRS already has powerful tools to audit taxpayers and collect this information on audit. Other comments raised concerns with the burden of this requirement for custodial brokers. Citing the estimate of the start-up costs required to put systems in place to comply with the proposed regulations' broker reporting requirements, another comment raised the concern that many industry participants are smaller businesses with limited funding and resources that cannot afford to build infrastructure to securely store this information. Another comment raised the concern that reporting of transaction ID and digital asset address information would make the Form 1099-DA difficult for taxpayers to read. Another comment noted that this information is not helpful to taxpayers, who should already know this information. Other comments suggested that the reporting standard for digital assets should not be any more burdensome than it is for securities, and that any additional data fields for digital assets would force traditional brokers that also effect sales of digital assets to modify their systems. Another comment suggested that the final regulations should not require the reporting of transaction ID and digital asset address information in order to align the information reported under section 6045 with the information required under the CARF, a draft of which would have required the reporting of digital asset addresses but ultimately did not include such a requirement.

Some comments offered alternative solutions for providing the IRS with the visibility that this information would provide. For example, one comment suggested that because of the large number of digital asset transactions, brokers should only report the digital asset addresses (not transaction IDs) associated with transactions. Another comment recommended the use of impersonal tax ID numbers that would not reveal the customer's full identity to address privacy concerns. Another comment suggested it would be less burdensome to require reporting of account IDs rather than digital asset

addresses. Another comment suggested that the reporting of this information be optional or otherwise limited to transactions that involve a high risk of tax evasion or non-compliance or that otherwise exceed a large threshold. Another comment recommended the use of standardized tax lot identification like the securities industry. Another comment recommended instructing brokers to retain this information for later examination. Another comment recommended that brokers not report this information but, instead, be required to retain this information to align with the CARF reporting requirements.

The Treasury Department and the IRS considered these comments. Although transaction ID and digital asset address information would provide uniquely helpful visibility into a taxpayer's transaction history, which the IRS could use to verify taxpayer compliance with past tax reporting obligations, the final regulations remove the obligation to report transaction ID and digital asset address information. The Treasury Department and the IRS have concluded, however, that this information will be important for IRS enforcement efforts, particularly in the event a taxpayer refuses to provide it during an examination. Accordingly, final § 1.6045-1(d)(11) provides a rule that requires brokers to collect this information with respect to the sale of a digital asset and retain it for seven years from the due date for the related information return filing. This collection and retention requirement, however, would not apply to digital assets that are not subject to reporting due to the special reporting methods discussed in Parts I.D.2. through I.D.4. of this *Summary of Comments and Explanation of Revisions*. The seven-year period was chosen because the due date for electronically filed information under section 6045 is March 31 of the calendar year following the year of the sale transaction. Because most taxpayers' statute of limitations for substantial omissions from gross income will expire six years from the April 15 filing date for their Federal income tax return, a six-year retention period from the March 31 filing date would end before the statute of the limitations expires. Therefore, the final regulations designated a seven-year period for brokers to retain this information to ensure the IRS will have access to all the records it needs during the time that the taxpayer's statute of limitations is open. The IRS intends to monitor the information reported on digital assets and the extent to which taxpayers

comply with providing this information when requested by IRS personnel as part of an audit or other enforcement or compliance efforts. If abuses are detected that hamper the IRS's ability to enforce the Code, the Treasury Department and the IRS may reconsider this decision to require brokers to maintain this information in lieu of reporting it to the IRS.

Another comment raised the concern that custodial brokers may not have transaction ID and digital asset address information associated with digital assets that were transferred-in to the broker before the applicability date of these regulations. This comment recommended that the reporting requirement be made effective only for assets that were transferred-in to the custodial broker on or after January 1, 2023, to align with the enactment of the Infrastructure Act. The Treasury Department and the IRS understand that brokers may not have transaction ID and digital asset address information associated with digital assets that were transferred-in to the broker before the applicability date of these regulations. The Treasury Department and the IRS, however, decline to adopt an applicability date rule with respect to the collection and retention of this information because some brokers may receive the information on transferred-in assets and to the extent they do, that information should be produced when requested under the IRS's summons authority. Accordingly, brokers should maintain transaction ID and digital asset address information associated with digital assets that were transferred-in to the broker before the applicability date of this regulation to the extent that information was retained in the ordinary course of business.

The proposed regulations also required that for each digital asset sale for which a broker is required to file an information return, that the broker report whether the consideration received in that sale was cash, different digital assets, other property, or services. Numerous comments raised the concern that reporting the specific consideration received is too intrusive and causes security concerns. The final regulations do not make any changes in response to these comments because the language in the proposed (and final) regulations does not require brokers to report the specific goods or services purchased by the customer, but instead requires the broker to report on the category type that the consideration falls into. For example, if digital asset A is used to make a payment using the services of a PDAP for a motor vehicle, the regulations require the PDAP to

report that the consideration received was for property (as opposed to cash, different digital assets, broker services, or other property). The purpose of this rule is to allow the IRS to be able to distinguish between sales involving categories of consideration because sales for cash do not raise the same valuation concerns as sales for different digital assets, other property, or services. In cases in which digital assets are exchanged for different digital assets, however, the Form 1099-DA may request brokers to report that specific digital asset received in return because of the enhanced valuation concerns that arise in these transactions. Another comment suggested that providing the gross proceeds amount in a non-cash transaction would not be helpful or relevant. The final regulations do not adopt this comment because gross proceeds reporting on non-cash transactions is, in fact, helpful and relevant to customers who must include gains and losses from these transactions on their Federal income tax returns.

The proposed regulations would have required the broker to report the name of the digital asset sold. One comment noted that there is no universal convention or standard naming convention for digital assets. As a result, many digital assets share the same name or even the same ticker symbol. This comment recommended that the final regulations allow brokers the flexibility to provide enough information to reasonably identify the digital asset at issue. This comment also recommended that brokers be given the ability to provide the name of the trading platform where the transaction was executed to ensure that the name of the digital asset is clearly communicated. The final regulations do not adopt this comment because it is more appropriate to address these issues on the Form 1099-DA and its instructions.

The proposed regulations also required that, for each digital asset sale for which a broker is required to file an information return, the broker report the gross proceeds amount in U.S. dollars regardless of whether the consideration received in that sale was cash, different digital assets, other property, or services. One comment recommended that brokers not be required to report gross proceeds in U.S. dollars for transactions involving the disposition of digital assets in exchange for different digital assets, but instead be required to report only the name of the digital asset received and the number of units received in that transaction. Although this suggestion would relieve the broker from having to determine the fair market value of the received digital assets in

that transaction, the final regulations do not adopt this suggestion because the U.S. dollar value of the received digital assets is information that taxpayers need to compute their tax gains or losses and the IRS needs to ensure that taxpayers report their transactions correctly on their Federal income tax returns.

The proposed regulations required brokers to report sales of digital assets on a transactional (per-sale) basis. One comment recommended that the final regulations alleviate burden on brokers and instead provide for aggregate reporting, with a separate Form 1099-DA filed for each type of digital asset. The final regulations do not adopt this recommendation. Transactional reporting on sales of digital assets is generally necessary so that the amount received in a digital asset sale can be compared with the basis of those digital assets to determine gain or loss. Transactional reporting is most helpful to taxpayers who must report these transactions on their Federal income tax returns and to the IRS to ensure taxpayers report these transactions on their Federal income tax returns.

Several comments recommended that final regulations include a *de minimis* threshold for digital asset transactions that would exempt from reporting minor sale transactions—and in particular payment transactions—falling below that threshold. One comment suggested that such a *de minimis* threshold could help to prevent taxpayers from moving their digital assets to self-custodied locations that may be outside the scope of broker reporting. One comment recommended that brokers not be required to obtain tax documentation from customers (and therefore not report on those customers' tax identification numbers) for taxpayers with annual transactions below a *de minimis* threshold. A few comments recommended that separate *de minimis* thresholds or reduced reporting requirements be applied to brokers with lower transaction volumes during a start-up or transitional period. Some comments recommended aggregate annual thresholds for this purpose, for example based on the customer's aggregate gross proceeds or aggregate net gain for the year from these transactions, whereas other comments recommended per-transaction thresholds based either on gross proceeds or net gain generated from each transaction. One comment suggested that whatever threshold is applied, that it only be used for PDAPs.

Except as discussed in Parts I.B.2., I.D.2., and I.D.3. of this *Summary of Comments and Explanation of Revisions* (involving payment sale transactions and certain transactions involving

qualifying stablecoins and specified NFTs), the final regulations do not adopt an additional *de minimis* threshold for digital asset sales for several reasons. First, any per-transaction threshold for the types of digital assets not subject to the *de minimis* thresholds discussed in Parts I.B.2., I.D.2., and I.D.3. of this *Summary of Comments and Explanation of Revisions* would not be easy for brokers to administer because these thresholds are more easily subject to manipulation and structuring abuse by taxpayers, and brokers are unlikely to have the information necessary to prevent these abuses by taxpayers, for example by applying an aggregation or anti-structuring rule. Second, the *de minimis* threshold for qualifying stablecoins will already give brokers the ability to avoid reporting on dispositions of \$10,000 in qualifying stablecoins, which are the types of digital assets that are least likely to give rise to significant gains or losses, and the *de minimis* threshold for payment sale transactions will give PDAPs the ability to avoid reporting on dispositions of other types of digital assets that do not exceed \$600. Third, extending any additional annual threshold to sales of these other types of digital assets that are more likely to give rise to tax gains and losses will leave taxpayers without the information they need to compute those gains and losses and will leave the IRS without the information it needs to ensure that taxpayers report all transactions required to be reported on their Federal income tax returns. Fourth, information reporting without taxpayer TINs is generally of limited utility to the IRS for verifying taxpayer compliance with their reporting obligations. Finally, a separate *de minimis* threshold or reduced reporting requirements for small brokers would be relatively easy for brokers to manipulate and would leave the customers of such brokers without essential information.

2. Optional Reporting Rules for Certain Qualifying Stablecoins

a. Description of the Reporting Method

As discussed in Part I.A.1. of this *Summary of Comments and Explanation of Revisions*, the Treasury Department and the IRS have determined that it is appropriate to permit brokers to report certain stablecoin sales under an optional alternative reporting method to alleviate burdensome reporting for these transactions. This reporting method was developed after careful consideration of the comments submitted recommending a tailored exemption from reporting for

certain stablecoin sales. These recommendations took different forms, including requests for exemptions for certain types of stablecoins and recommendations against granting an exemption for other types of stablecoins. One comment suggested that reporting relief would not be appropriate for dispositions of stablecoins for cash or property other than different digital assets. These so-called “off-ramp transactions” convert the owner’s overall digital asset investment into a non-digital asset investment and, the comment stated, could provide taxpayers and the IRS with the opportunity to reconcile and verify the blockchain history of such stablecoins to ensure that previous digital asset transactions were reported. The Treasury Department and the IRS agree that reporting is appropriate and important for off-ramp transactions involving stablecoins because the IRS would be able to use this information to gain visibility into previously unreported digital asset transactions.

Several comments recommended requiring reporting on stablecoin sales when the reporting reflects explicit trading activity around fluctuations involving the stablecoin. Because stablecoins do not always precisely reflect the value of the fiat currencies to which they are pegged, trading activity associated with fluctuations in stablecoins are more likely to generate taxable gains and losses. The Treasury Department and the IRS have concluded that traders seeking to profit from stablecoin fluctuations are likely to sell these stablecoins for cash (in an off-ramp transaction) or for other stablecoins that have not deviated from their designated fiat currency pegs. Accordingly, the Treasury Department and the IRS have concluded that reporting on sales of stablecoins for different stablecoins is also appropriate to assist in tax administration.

In discussing other types of transactions, several comments noted that a disposition of a stablecoin for other digital assets often reflects mere momentary ownership of the stablecoin in transactions that use the stablecoin as a bridge asset in an exchange of one digital asset for a second digital asset. These comments also noted that, to the extent that a disposition of a stablecoin for a different digital asset does give rise to gain or loss, that gain or loss will ultimately be reflected (albeit on a net basis) when the received digital asset is later sold or exchanged. The Treasury Department and the IRS agree that, in contrast to sales of stablecoins for cash or other stablecoins, reports on sales of stablecoins for different digital assets

(other than stablecoins) are less important for tax administration. Accordingly, the Treasury Department and the IRS have concluded that it is appropriate to allow brokers not to report sales of certain stablecoins for different digital assets that are not also stablecoins.

Some comments recommended exempting sales of stablecoins from cost basis reporting given their belief in the low likelihood that these sales would result in gain or loss. Other comments recommended that the final regulations permit combined or aggregate reporting for stablecoin sales to lessen the reporting burden for brokers and the burden of receiving returns on the IRS. The Treasury Department and the IRS agree that basis reporting for all types of stablecoin sales may not justify the burden of tracking and reporting those sales. Although taxpayers that trade around stablecoin fluctuations would benefit from cost basis reporting, the Treasury Department and the IRS have concluded that these traders are more likely to be more sophisticated traders that are able to keep basis records on their own. The Treasury Department and the IRS have also concluded that allowing for reporting of stablecoins sales on an aggregate basis would strike an appropriate balance between the taxpayer’s and IRS’s need for information and the broker’s interest in a reduced reporting burden.

In addition to an overall aggregate reporting approach, numerous comments also recommended that the final regulations include a *de minimis* threshold for these stablecoin sales that would exempt reporting on a taxpayer’s stablecoin sales to the extent that taxpayer’s total gross proceeds from all stablecoin sales for the year did not exceed a specified threshold. Several comments suggested *de minimis* thresholds based on the taxpayer’s aggregate net gain from stablecoin sales for the year. Other comments recommended the use of per-transaction *de minimis* thresholds, based either on the gain or loss in the transaction or the gross proceeds from the transaction.

The Treasury Department and the IRS considered these comments to decide whether to further reduce the overall burden on brokers and the IRS. The final regulations do not adopt a per-transaction *de minimis* threshold because any per-transaction threshold for stablecoins would be relatively easy for customers to abuse by structuring their transactions. Although anti-structuring rules based on the intent of the taxpayer have been used in other information reporting regimes, such as section 6050I of the Code, similar rules

would be unadministrable here. Under section 6050I, the person who receives payment is the person who files the information returns and will know when a payor is making multiple payments as part of the same transaction. For purposes of section 6045 digital asset transaction reporting, however, brokers may not have the information necessary to determine the motives behind their customer's decisions to engage in numerous smaller stablecoin transactions instead of fewer larger transactions involving these stablecoins. Moreover, even for transactions exceeding a *de minimis* threshold, per-transaction reporting still has the potential to result in a very large number of information returns, with a correspondingly large burden on brokers and the IRS. The final regulations also do not adopt an aggregate *de minimis* threshold based on gains or losses because many brokers will not have the acquisition information necessary to determine basis, which would be necessary in order to be able to take advantage of such a *de minimis* rule, thus making the threshold less effective at reducing the number of information returns required to be filed. Instead, the final regulations adopt an aggregate gross proceeds threshold as striking an appropriate balance between a threshold that will provide the greatest burden relief for brokers and still provide the IRS with the information needed for efficient tax enforcement. Additionally, to avoid manipulation and structuring techniques that could be used to abuse this threshold, the final regulations require that the overall threshold be applied as a single threshold applicable to a single customer's sales of all stablecoins regardless of how many accounts or wallets that customer may have with the broker.

Numerous comments recommended various *de minimis* thresholds ranging from \$10 to \$50,000. In determining the dollar amount that should be used for this *de minimis* threshold, the Treasury Department and the IRS considered that the gross proceeds reported for these stablecoin transactions are unlikely to reflect ordinary income or substantial net gain. The Treasury Department and the IRS have concluded that a larger *de minimis* threshold would eliminate most of the reporting on customers with small stablecoin holdings and likely small amounts of gain or loss without allowing more significant sales of fiat-based stablecoins to evade both information and income tax reporting. Accordingly, the Treasury Department and the IRS have determined that a \$10,000 threshold is the most

appropriate because that threshold aligns with the reporting threshold under section 6050I, which Congress has adopted as the threshold for requiring certain payments of cash and cash-like instruments to be reported.

In sum, the final regulations adopt an optional \$10,000 overall annual *de minimis* threshold for certain qualifying stablecoin sales and permit sales over this amount to be reported on an aggregate basis rather than on a transactional basis. Specifically, in lieu of requiring brokers to report gross proceeds and basis on stablecoin sales under the transactional reporting rules of § 1.6045-1(d)(2)(i)(B) and (C), the final regulations at § 1.6045-1(d)(10)(i) permit brokers to report designated sales of certain stablecoins (termed qualifying stablecoins) under an alternative reporting method described at § 1.6045-1(d)(10)(i)(A) and (B). A *designated sale of a qualifying stablecoin* is defined in final § 1.6045-1(d)(10)(i)(C) to mean any sale as defined in final § 1.6045-1(a)(9)(ii)(A) through (D) of a qualifying stablecoin other than a sale of a qualifying stablecoin in exchange for different digital assets that are not qualifying stablecoins. In addition, a designated sale of a qualifying stablecoin includes any sale of a qualifying stablecoin that provides for the delivery of a qualifying stablecoin pursuant to the settlement of any executory contract that would be treated as a designated sale of the qualifying digital asset under the previous sentence if the contract had not been executory. Final § 1.6045-1(d)(10)(i)(C) also defines the term *non-designated sale of a qualifying stablecoin* as any sale of a qualifying stablecoin other than a designated sale of a qualifying stablecoin. A broker reporting under this optional method is not required to report sales of qualifying stablecoins that are non-designated sales of qualifying stablecoins under either this optional method or the transactional reporting rules. Accordingly, for example, if a customer uses a qualifying stablecoin to buy another digital asset that is not a qualifying stablecoin, no reporting would be required if the broker is using the optional reporting method for qualifying stablecoins.

Additionally, if a customer's aggregate gross proceeds (after reduction for the allocable digital asset transaction costs) from all designated sales of qualifying stablecoins do not exceed \$10,000 for the year, a broker using the optional reporting method would not be required to report those sales. The Treasury Department and the IRS anticipate that the combination of allowing no reporting of non-designated sales of

qualifying stablecoins and the \$10,000 annual threshold for all designated sales of qualifying stablecoins will have the effect of eliminating reporting on qualifying stablecoin transactions for many customers.

If a customer's aggregate gross proceeds (after reduction for the allocable digital asset transaction costs) from all designated sales of qualifying stablecoins exceed \$10,000 for the year, the broker must report on a separate information return for each qualifying stablecoin for which there are designated sales. Final § 1.6045-1(d)(10)(i)(B). If the aggregate gross proceeds exceed the \$10,000 threshold, reporting is required with respect to each qualifying stablecoin for which there are designated sales even if the aggregate gross proceeds for that qualifying stablecoin is less than \$10,000. This rule is illustrated in final § 1.6045-1(d)(10)(i)(D)(2) (*Example 2*). A broker reporting under this method must report on a separate Form 1099-DA or any successor form in the manner required by the form or instructions the following information with respect to designated sales of each type of qualifying stablecoin:

- (1) The name, address, and taxpayer identification number of the customer;
- (2) The name of the qualifying stablecoin sold;
- (3) The aggregate gross proceeds for the year from designated sales of the qualifying stablecoin (after reduction for the allocable digital asset transaction costs);
- (4) The total number of units of the qualifying stablecoin sold in designated sales of the qualifying stablecoin;
- (5) The total number of designated sale transactions of the qualifying stablecoin; and
- (6) Any other information required by the form or instructions.

Brokers that want to use this reporting method in place of transactional reporting are not required to submit any form or otherwise make an election to be eligible to report in this manner. Additionally, brokers may report sales of qualifying stablecoins under this optional reporting method for some or all customers, though the method chosen for a particular customer must be applied for the entire year for that customer's sales. A broker may change its reporting method for a customer from year to year. Because the obligation to file returns under the transactional method in final § 1.6045-1(d)(2)(i)(B) is discharged only when a broker files information returns under the optional reporting method under § 1.6045-1(d)(10)(i), brokers that fail to report a customer's sales under either method will be subject to penalties under section 6721 for failure to file

information returns under the transactional method. See Part VI.B. of this *Summary of Comments and Explanation of Revisions* for a discussion of how the backup withholding rules will apply to payments falling below this *de minimis* threshold and to the gross proceeds of non-designated sales of qualifying stablecoins.

In the case of a joint account, final § 1.6045-1(d)(10)(v) provides a rule for the broker to determine which joint account holder will be the customer for purposes of determining whether the customer's combined gross proceeds for all accounts owned exceed the \$10,000 *de minimis* threshold. This joint account rule follows the general rules for determining which joint account holder's name and TIN should be reported by the broker on the information return (but for the application of the relevant threshold). Like the general rules, the joint account holder's name and TIN that must be reported by the broker is determined after the application of the backup withholding rules under § 31.3406(h)-2(a). For example, under these rules, if two or more individuals own a joint account, the account holder that is treated as the customer is generally the first named individual on the account. See Form W-9 at p.5. If, however, the first named individual does not supply a certified TIN to the broker (or supplies a Form W-8BEN establishing exempt foreign status) and if another individual joint account holder supplies a certified TIN, then the broker must treat that other individual as the customer for this purpose. See § 31.3406(h)-2(a)(3). Alternatively, if the first named individual joint account holder supplies a Form W-8BEN establishing exempt foreign status and the other individual joint account holder does not supply a certified TIN (or a Form W-8BEN) to the broker, then the broker must treat that other individual as the customer for this purpose because that is the individual that caused the broker to begin the backup withholding that will be shown on the information return.

b. Qualifying Stablecoin

In describing which stablecoins they thought should be afforded reporting relief, comments recommended many different definitions, and those definitions generally included several types of requirements. Because the recommended definitions encompass multiple kinds of digital assets, for ease of description here we will use the term "purported stablecoin" as a stand-in for the type of asset the comments wanted to exempt from some or all reporting.

First, many comments recommended that the purported stablecoin must have been designed or structured to track the value of a fiat currency for use as a means of making payment. Other comments recommended looking to whether the purported stablecoin is marketed as pegged to the fiat currency or whether the stablecoin is denominated on a 1:1 basis by reference to the fiat currency. Second, the comments proposed that the purported stablecoin must, in fact, function as a means of exchange and be generally accepted as payment by third parties. Third, the comments generally recommended that the purported stablecoin have some type of built-in mechanism designed to keep the value of the purported stablecoin in line with the value of the tracked fiat currency, or at least within designated narrow bands of variation from value of the fiat currency. Further, these comments recommended that this stabilization mechanism must actually work in practice to keep the trading value of the purported stablecoin within those designated narrow bands.

Proposals for how this stabilization mechanism requirement could be met varied. For example, several comments recommended a requirement that the issuer guarantee redemption at par or otherwise be represented by a separate claim on the issuer denominated in fiat currency. Another comment recommended that the issuer meet collateralization (or reserve) requirements and provide annual third party attestation reports regarding reserve assets. Another comment proposed that these reserves be held in segregated, bankruptcy-remote reserve accounts for the benefit of holders. Another comment proposed that these reserves be held in short-term, liquid assets denominated in the same fiat currency. Other comments suggested requiring that the purported stablecoin be issued on receipt of funds for the purpose of making payment transactions. Several other comments proposed requiring that the purported stablecoin be regulated by a Federal, State, or local government. One comment suggested prohibiting any stabilization mechanism that is based on an algorithm that achieves price stability by managing the supply and demand of the stablecoin against a secondary token that is not price-pegged. Several comments recommended requiring that the purported stablecoin not deviate significantly from the fiat currency to which it is pegged. For example, the comments recommended that the value

of the stablecoin not be permitted to fall outside a specified range (with suggestions ranging from 1 percent to 10 percent) for a meaningful duration over specified periods (such as for more than 24 hours within any consecutive 10-day period or for any period during a 180-day period during the previous calendar year).

Because the purpose of the optional reporting method is to minimize reporting on very high volumes of transactions involving little to no gain or loss, and because the optional reporting regime will ensure at least some visibility into transactions that in the aggregate exceed the \$10,000 threshold, the Treasury Department and the IRS have determined that the definition of fiat currency-based stablecoins should be relatively broad to provide the most reduction of burden on brokers and the IRS. Thus, because the optional reporting method for stablecoins will provide for aggregate reporting of all proceeds from sales for cash or other stablecoins exceeding the *de minimis* threshold, it is not necessary to limit the definition of qualifying stablecoins to those with specific stabilization mechanisms such as fiat currency reserve requirements, as long as the stablecoin, in fact, retains its peg to the fiat currency.

Accordingly, based on these considerations, the final regulations describe *qualifying stablecoins* as any digital asset that meets three conditions set forth in final § 1.6045-1(d)(10)(ii)(A) through (C) for the entire calendar year. First the digital asset must be designed to track on a one-to-one basis a single convertible currency issued by a government or a central bank (including the U.S. dollar). Final § 1.6045-1(d)(10)(ii)(A).

Second, final § 1.6045-1(d)(10)(ii)(B) requires that the digital asset use one of two stabilization mechanisms set forth in final § 1.6045-1(d)(10)(ii)(B)(1) and (2), which are based on the recommendations made by the comments. The first stabilization mechanism provided in final § 1.6045-1(d)(10)(ii)(B)(1) sets forth a results-focused test. Under this stabilization mechanism, the stabilization requirement is met if the stabilization mechanism causes the unit value of the digital asset not to fluctuate from the unit value of the convertible currency it was designed to track by more than 3 percent over any consecutive 10-day period during the calendar year. Final § 1.6045-1(d)(10)(ii)(B)(1) also provides that UTC should be used in determining when each day within this 10-day period begins and ends. UTC time was chosen so that the same digital asset

will satisfy or not satisfy this test for all brokers regardless of the time zone in which such broker keeps its books and records. Additionally, this stabilization mechanism provides design flexibility to stablecoin issuers because it does not turn on how a digital asset maintains a stable value relative to a fiat currency, so long as it does. The second stabilization mechanism provided in final § 1.6045–1(d)(10)(ii)(B)(2), in contrast, sets forth a design-focused test that provides more certainty to brokers at the time of a transaction. Under this stabilization mechanism, the stabilization requirement is met if regulatory requirements apply to the issuer of the digital asset requiring the issuer to redeem the digital asset at any time on a one-to-one basis for the same convertible currency that the stablecoin was designed to track. Because a qualifying stablecoin that satisfies this second stabilization mechanism includes key requirements set forth in the specified electronic money product definition under section IV.A.4. of the CAREF, it is anticipated that this definition will be considered when regulations are drafted to implement the CAREF. See Part I.G.2. of this *Summary of Comments and Explanation of Revisions* (discussing U.S. implementation of the CAREF).

Third, under final § 1.6045–1(d)(10)(ii)(C), to be a qualifying stablecoin, the digital asset must generally be accepted as payment by persons other than the issuer. This acceptance requirement would be met if the digital asset is accepted by the broker as payment for other digital assets or is accepted by a second party. An example of this is acceptance by a merchant pursuant to a sale effected by a PDAP.

To avoid confusion for brokers, customers, and the IRS, the Treasury Department and the IRS have concluded that the determination of whether a digital asset is a qualifying stablecoin or not must be consistent throughout the entire year. Accordingly, the definition of a qualifying stablecoin requires that the digital asset meet the three conditions for the entire calendar year. For example, if a digital asset loses its peg and no longer satisfies the stabilization mechanism set forth in final § 1.6045–1(d)(10)(ii)(B)(1), it will not be treated as a qualifying stablecoin for the entire year unless the digital asset satisfies the stabilization mechanism set forth in final § 1.6045–1(d)(10)(ii)(B)(2). See Part VI.B. of this *Summary of Comments and Explanation of Revisions* for a discussion of the backup withholding exception for sales of digital assets that

would have been non-designated sales of a qualifying stablecoin up to and including the date that digital asset loses its peg and no longer satisfies the stabilization mechanism set forth in final § 1.6045–1(d)(10)(ii)(B)(1).

The Treasury Department and the IRS recognize that brokers will not know at the beginning of a calendar year whether a digital asset that would be a qualifying stablecoin solely under the results-focused test will be a qualifying stablecoin for that year, and therefore will need to be prepared to report and backup withhold on sales of that asset. However, it is anticipated that the results-focused test will rarely result in a digital asset losing qualifying stablecoin status unless there is a significant and possibly permanent loss of parity between the stablecoin and the convertible currency to which it is pegged. Other alternatives suggested by comments, such as a retrospective test that is based on whether a digital asset failed a results-based test during a period in the past, for example the 180 days prior to a sale, could result in different treatment of the same digital asset depending on when a sale of the digital asset took place during a calendar year, which would be confusing for both brokers and customers. Basing qualification on the results for a prior year would alleviate that concern, but could result in treating a digital asset as a qualifying stablecoin for a year in which it was not stable, and as not a qualifying stablecoin for a later year in which it is stable, which would not achieve the purposes of the optional reporting method for qualifying stablecoins. Accordingly, the Treasury Department and the IRS have concluded that a test that treats a digital asset as a qualifying stablecoin, or not, for an entire calendar year is the most administrable way to achieve those purposes.

3. Optional Reporting Rules for Certain Specified Nonfungible Tokens

a. Description of the Reporting Method

Notwithstanding the conclusion discussed in Part I.A.2. of this *Summary of Comments and Explanation of Revisions* that the definition of digital assets includes NFTs, the Treasury Department and the IRS considered the many comments received suggesting a modified reporting approach under section 6045 for all or a subset of NFTs. One comment recommended against requiring reporting for NFTs for which the owner does not have the expectation that the NFT will return gain. The final regulations do not adopt this comment because it would be overly burdensome

for brokers to determine each customer's investment expectation. Other comments recommended against any reporting on NFT transactions by brokers under section 6045 because reporting under section 6050W (on Form 1099-K, *Payment Card and Third Party Network Transactions*) is more appropriate for NFT sellers. Indeed, these comments noted, brokers that meet the definition of third party settlement organizations under section 6050W(b)(3) are already filing Forms 1099-K on their customers' sales of NFTs. The final regulations do not adopt these comments because the Treasury Department and the IRS have concluded that the reporting rules should apply uniformly to NFT marketplaces, and not all digital asset brokers meet the definition of a third party settlement organization under section 6050W(b)(3).

Several comments raised valuation considerations, particularly in NFT-for-NFT exchanges or NFT sales in conjunction with physical goods or events, as a reason to exempt all NFTs from reporting. The final regulations do not adopt these comments because taxpayers engaging in these transactions still need to report the transactions on their Federal income tax returns. Additionally, the final regulations already permit brokers that cannot determine the value of property customers receive in a transaction with reasonable accuracy to report that the gross proceeds have an undeterminable value. Final § 1.6045–1(d)(5)(ii)(A).

Other comments recommended against requiring reporting for all NFT transactions because NFTs, unlike other digital assets, are easier for taxpayers to track on the relevant blockchain. As a result, these comments suggested, taxpayers do not need to be reminded of their NFT sales and can more easily determine their bases in these assets by referencing the public blockchain. The final regulations do not adopt this comment because to be helpful for closing the income tax gap, information reporting must not only provide the information necessary for taxpayers to compute their tax gains, it must also provide the IRS with that information to ensure that taxpayers report all transactions required to be reported on their Federal income tax returns.

Several comments asserted that the cost of reporting on non-financial NFTs outweighs the tax administration benefits to taxpayers and the IRS because these assets generally do not have substantial value, and as such transactions in these assets do not contribute meaningfully to the income tax gap. For example, several comments

cited to publicly available statistics showing that many NFT transactions involve small dollar amounts. According to one comment, the average price of an NFT transaction was only \$150 for the third quarter of 2022, and the median NFT transaction value was only \$37.69 over the six-month period ending October 1, 2023.³ Additionally, the comment stated that the value of approximately 45 percent of all NFT transactions was less than \$25, and 82 percent of all NFT transaction were valued at less than \$500, when compared to total exchange volume on the largest centralized and decentralized exchanges.⁴ Given the cost of transactional reporting and the relatively small value of the transactions, several comments suggested that aggregate reporting, in a regime analogous to that under section 6050W for reporting on payment card and third party network transactions, would lessen the burden of broker reporting on non-financial NFTs without a meaningful curtailment of the overall goal of reducing the income tax gap. Other comments recommended against NFT basis reporting under this aggregate reporting proposal because, unlike cryptocurrency and other fungible tokens, past purchase prices for NFTs are trackable on the blockchain through the NFT's unique token identification. Another comment recommended against transactional reporting for creators of non-financial NFTs (primary sales)—as opposed to resellers of non-financial NFTs (secondary sales)—because transactional reporting for creators would needlessly

result in large numbers of separate reports. Additionally, this comment recommended that primary sales of non-financial NFTs should be reported under section 6050W instead of under section 6045 because returns under section 6045 would incorrectly report gross proceeds income instead of ordinary income.

Transactional reporting under section 6045 is generally necessary to allow taxpayers and the IRS to compare the gross proceeds taxpayers received in sales of certain property with the cost basis of that property. Because the cited statistics show that a substantial portion of non-financial NFT transactions are small dollar transactions for which taxpayers can more easily track their own cost basis, the Treasury Department and the IRS agree that the cost of transactional reporting for low-value non-financial NFTs may outweigh the benefits to taxpayers and the IRS. Accordingly, the final regulations have added a new optional alternative reporting method for sales of certain NFTs to allow for aggregate reporting instead of transactional reporting, with a *de minimis* annual threshold below which no reporting is required. Brokers that do not wish to build a separate system for NFTs eligible for aggregate reporting can report all NFT transactions under the transactional system. Additionally, brokers do not need to submit any form or otherwise make an election to report under this method and are not required to report under this optional method consistently from customer to customer or from year to year; however, the method chosen for a particular customer must be applied for the entire year for that customer's sales. Finally, to address the comment regarding the distinction between primary sales of NFTs that give rise to ordinary income and secondary sales of NFTs that give rise to gross proceeds, brokers choosing to report sales of NFTs under this optional method must report, to the extent ordinarily known, the portion of the total gross proceeds reported attributable to primary sales (that is, the first sale of the particular NFT).

Given the statistics cited showing the relatively small average and median values for non-financial NFT transactions, numerous comments said these small purchases should not need to be reported and several comments recommended the application of a *de minimis* threshold below which reporting would not be required at all to alleviate reporting on an overwhelming majority of NFT sales. Some comments recommended the use of a per-transaction threshold with proposed

thresholds ranging from \$50 to \$50,000, while other comments recommended an aggregate gross proceeds threshold, similar to the \$600 threshold applicable under section 6050W(e), as most appropriate. Because some of these NFT sales are currently reportable under section 6050W, the Treasury Department and the IRS have concluded that it would be most appropriate to follow the same \$600 reporting threshold applicable under that provision. Accordingly, the final regulations adopt an annual \$600 *de minimis* threshold for each customer below which brokers reporting under the optional aggregate method are not required to report gross proceeds from these NFTs transactions. If the customer's total gross proceeds (after reduction for any allocable digital asset transaction costs) from sales of specified NFTs exceed \$600 for the year, a broker may report those sales on an aggregate basis in lieu of reporting those sales under the transactional reporting rules. A broker reporting under this method must report on a Form 1099-DA (or any successor form) in the manner required by the form or instructions the following information with respect to the customer's sales of specified NFTs:

- (1) The name, address, and taxpayer identification number of the customer;
- (2) The aggregate gross proceeds for the year from all sales of specified NFTs (after reduction for the allocable digital asset transaction costs);
- (3) The total number of specified NFTs sold; and
- (4) Any other information required by the form or instructions.

Additionally, a broker reporting under this method must report the aggregate gross proceeds that are attributable to the first sale by the creator or minter of the specified NFT to the extent the broker would ordinarily know that the transaction is the first sale of the specified NFT token by the creator or minter. It is anticipated that a broker would ordinarily know that the transaction is the first sale of the specified NFT by the creator or minter if the broker provided services to the creator or minter that enabled the creator to create (or minter to mint) the specified NFT. It is also anticipated that, to the extent a broker inquires whether the customer's sale of the specified NFT will be a first sale, that the broker would ordinarily know this information based on the customer's response. Brokers are not required to seek out such information from third party sources, such as a public blockchain or through blockchain analytics.

The IRS intends to monitor NFTs reported under this optional aggregate

³ The comment cited a report from NonFungible.com, which stated that all data included was sourced from the blockchain via its own dedicated blockchain nodes. The report includes a table showing the average price for an NFT in the third quarter of 2022 was \$154. This was a drop in value from an average price of \$643 from the second quarter of 2022. The data sets underlying these estimates consist of public blockchain data regarding NFT volume, centralized exchange volume, and decentralized exchange volume. See Dune Analytics, <https://dune.com/browse/dashboards> (last visited October 30, 2023); Dune Analytics, <https://github.com/duneanalytics/spellbook/tree/main> (last visited October 30, 2023); The Block, <https://www.theblock.co/data/crypto-markets/spot/cryptocurrency-exchange-volume-monthly> (last visited Oct. 30, 2023).

⁴ This comment cited an article that used data reported in an article published on Medium's website, "Most artists are not making money off NFTs and here are some graphs to prove it" from April 19, 2021. This article stated it was based on blockchain and other marketplace data for the week of March 14 through March 21, 2021. During that timeframe, according to the article, 33.6 percent of primary sales of NFTs were \$100 or less; 20 percent of primary sales were \$100 to \$200, and 7.7 percent of primary sales were \$200 to \$300. While not an exact match to the information provided by the comment, the sales data in this article are comparable.

reporting method to determine whether this reporting hampers its tax enforcement efforts. If abuses are detected, the IRS will reconsider these special reporting rules for NFTs. For a discussion of how the backup withholding rules apply to payments falling below this *de minimis* threshold, see Part VI.B. of this *Summary of Comments and Explanation of Revisions*. See Part I.D.2.a. of this *Summary of Comments and Explanation of Revisions* for a discussion of how the *de minimis* threshold is applied to joint account holders.

b. Specified nonfungible token

In determining the specific subset of NFTs that should be eligible for this optional aggregate reporting method, the final regulations considered the comments received in favor of eliminating reporting on sales of certain types of NFTs. For example, one comment suggested the final regulations apply a “use test” to distinguish between NFTs that are used for investment purposes and those that are used for enjoyment purposes. The final regulations do not adopt this comment to define the subset of NFTs that are eligible for aggregate reporting because determining how a customer uses an NFTs would not be administratively feasible for most brokers. Another comment recommended that reporting should be required for those NFTs which (on a look through basis) reference assets that were previously subject to reporting under § 1.6045–1 or otherwise could be used to deliver value, such as a method of payment. The Treasury Department and the IRS generally agree with the distinction made in this comment because brokers already must determine if an effected sale is that of a security, commodity, etc. under the definitions provided under the section 6045 regulations. Accordingly, making the determination that an asset referenced by an NFT fits within those same definitions—or otherwise references a digital asset other than an NFT—is administrable and should not create significantly more burden for brokers. Because both types of NFT can result in taxable income, however, the Treasury Department and the IRS disagree with the comment’s conclusion that only NFTs that reference assets previously subject to broker reporting or otherwise could be used to deliver value should be subject to the final regulations. Instead, it is appropriate to require transactional reporting on sales of NFTs that reference previously reportable assets or otherwise could be used to deliver value

and allow for aggregate reporting on sales of other NFTs.

Accordingly, the final regulations under § 1.6045–1(d)(10)(iii) permit optional aggregate reporting for specified NFTs that look to the character of the underlying assets, if any, referenced by the NFT. Under these rules, to constitute a specified NFT, the digital asset must be of the type that is indivisible (that is, the digital asset cannot be subdivided into smaller units without losing its intrinsic value or function) and must be unique as determined by the inclusion in the digital asset itself of a unique digital identifier, other than a digital asset address, that distinguishes that digital asset from all other digital assets. Final § 1.6045–1(d)(10)(iv)(A) and (B). This means that the unique digital identifier is inherently part of the token itself and not merely referenced by the digital asset. Taken together, these requirements would exclude all fungible digital assets from the definition of specified NFTs, including the smallest units of such digital assets. The Treasury Department and the IRS considered whether the smallest units of fungible digital assets should be included in the definition of specified NFTs to the extent specialized off-chain software catalogs and indexes such units. The final regulations do not include such units in the definition of specified NFTs because, even if it was appropriate to include these assets in the definition of specified NFTs based on the application of off-chain software, the specialized off-chain software that catalogs and indexes such units, in fact, indexes every such unit regardless of whether the particular unit is trading separately or as part of a larger denomination of such digital asset. As a result, including these indexed digital assets in the definition would arguably result in larger denominations of a fungible digital asset being treated as combinations of multiple specified NFTs and thus subject to the optional aggregate reporting rule. Moreover, a definitional distinction that would ask brokers to look to the indexed units to determine if the indexed unit has any value separate from the fungible asset value would be difficult for brokers to administer.

In addition to satisfying these two criteria associated with the nonfungibility of the digital asset itself, to be a specified NFT, the digital asset must not directly (or indirectly through one or more other digital assets that also satisfy the threshold nonfungibility tests) provide the holder with an interest in certain excluded property. Excluded property generally includes

assets that were previously subject to reporting under § 1.6045–1 of the pre-2024 final regulations or any digital asset that does not satisfy either of the two criteria. Specifically, excluded property is defined as any security as defined in final § 1.6045–1(a)(3), commodity as defined in final § 1.6045–1(a)(5), regulated futures contract as defined in final § 1.6045–1(a)(6), or forward contract as defined in final § 1.6045–1(a)(7). Finally, excluded property includes any digital asset that does not satisfy the two threshold nonfungibility tests, such as a qualifying stablecoin or other non-NFT digital assets.

In contrast, a digital asset that satisfies the two criteria and references or provides an interest in a work of art, sports memorabilia, music, video, film, fashion design, or any other property or services (non-excluded property) other than excluded property is a specified NFT that is eligible for the optional aggregate reporting rule under the final regulations. An NFT that constitutes a security or commodity or other excluded property is an interest in excluded property for this purpose. Additionally, by excluding any NFT that provides the holder with any interest in excluded property from the definition of specified NFTs, an NFT that provides an interest in both excluded property and non-excluded property will not be included in the definition of specified NFT. This result lets brokers avoid having to undertake burdensome valuations with respect to NFTs that reference more than one type of property.

While several comments indicated that it would be administratively feasible for brokers to review each NFT to determine the nature of the underlying assets, one comment requested the adoption of a presumption test that would treat an NFT as an interest in financial assets unless the broker categorizes it otherwise. The Treasury Department and the IRS have concluded that a presumption rule for distinguishing between NFTs that is based on whether a broker chooses to categorize the underlying assets could potentially lead to abuse. Brokers that find it too difficult to determine the nature of assets referenced by NFTs can choose not to use the optional aggregate reporting method for NFTs. Accordingly, the final regulations do not adopt this presumption rule.

4. Reporting Rules for PDAP Sales

As discussed in Part I.B.2. of this *Summary of Comments and Explanation of Revisions*, the Treasury Department and the IRS have

determined that it is appropriate to permit some reporting relief for small PDAP sale transactions. Several comments offered alternatives to reporting on payment transaction sales to reduce the reporting burden of PDAPs. For example, several comments suggested exempting PDAPs from the requirement to report cost basis because PDAPs have no visibility into the customer's cost basis. The final regulations do not make any changes to address this comment because neither the proposed regulations nor the final regulations require PDAPs to report cost basis precisely because it is the understanding of the Treasury Department and the IRS that these brokers may not currently have any way to know the customer's cost basis.

Numerous comments recommended against any reporting of payments processed by PDAPs on purchases of common, lower-cost items such as a cup of coffee or ordinary consumer goods. Other comments recommended that the final regulations adopt a *de minimis* threshold for these purchases to reduce the overall reporting burden for these brokers. Another comment asserted that the changes made by the Infrastructure Act to section 6050I (requiring trades or businesses to report the receipt of more than \$10,000 in cash including digital assets) shows that Congress did not intend for section 6045 to capture lower-value digital asset purchase transactions. Another comment suggested that the potential revenue loss involving most purchases is extremely low and that using digital assets to make everyday purchases is not a realistic means of tax avoidance. This comment noted that the digital assets that are used to purchase daily items are stablecoins that do not ordinarily fluctuate in value. Another comment suggested a per transaction *de minimis* threshold for reporting on payments equal to the \$10,000 threshold in section 6050I or the \$50,000 threshold in the CARF. Another comment suggested that the *de minimis* threshold should match the annual threshold under section 6050W, though this comment also noted that this \$600 threshold amount was too low. Another comment recommended a per-transaction threshold for purchases over \$500 (adjusted for inflation), but also recommended, if this *de minimis* rule is adopted, that taxpayers be reminded in the instructions to Forms 1040 and 1099-DA that they still must report the gains and losses from these unreported payment transactions.

As discussed in Parts I.A.1. and I.D.2. of this *Summary of Comments and Explanation of Revisions*, the final

regulations adopt an optional \$10,000 overall annual *de minimis* threshold for qualifying stablecoin sales and permit sales over this amount to be reported on an aggregate basis rather than on a transactional basis. This \$10,000 annual threshold applies to PDAPs who choose to report qualifying stablecoin transactions under this optional method. Accordingly, given the comment that digital asset purchase transactions often are made using stablecoins, many purchases made using the services of PDAPs will not be reported due to the application of that *de minimis* threshold for payment transactions. This sizable overall annual threshold for payments made using qualifying stablecoins is appropriate because taxpayers are unlikely to have significant (if any) unreported gains or losses from these payment transactions that fall below the \$10,000 threshold. In contrast, as suggested by one comment, allowing for a *de minimis* threshold for digital assets other than qualifying stablecoins that are more likely to give rise to significant gains and losses likely would not be helpful to taxpayers who use them. This is because they would have to separately account for their payment transactions below the threshold to accurately report their gains and losses from these transactions for which they would not receive an information return. Moreover, because many PDAP transactions involve transactions in which the digital assets are first exchanged for cash before that cash is transmitted to the merchant, a high threshold for these transactions could create an incentive for taxpayers to dispose of their highly appreciated digital assets by way of payments just to avoid tax reporting. Notwithstanding these concerns, if a given taxpayer engages in relatively low-value payment transactions involving digital assets other than qualifying stablecoins, reporting to the IRS may not be as important in overcoming the overall income tax gap as the burden it would impose on PDAPs.

Accordingly, after balancing these competing concerns, the Treasury Department and the IRS have concluded that an annual *de minimis* threshold of \$600 would be appropriate for PDAP sales under final § 1.6045-1(a)(9)(ii)(D) because that threshold is similar to the threshold under sections 6041, 6041A, and 6050W(e) of the Code, thereby reflecting the balance between accurate tax reporting and information reporting requirements imposed on brokers that Congress thought appropriate. Additionally, this overall threshold for PDAP sales should be more

administrable because PDAPs would not have to adopt processes to monitor structuring activities used by customers to evade reporting. *See, e.g.*, § 1.6050I-1(c)(1)(ii)(B)(2) (treating an instrument as cash where the recipient knows that it is being used to avoid reporting). Under this threshold, PDAPs would not have to report PDAP sales of digital assets with respect to a customer if those sales did not exceed \$600 for the year. If a customer's PDAP sales exceed \$600 for the year, all of that customer's sales would be reportable under the general transactional reporting rules, because customers need that reporting to identify taxable dispositions of digital assets. Additionally, to avoid having to apply multiple *de minimis* thresholds to the same digital assets, the *de minimis* threshold for PDAP sales only applies to digital assets other than qualifying stablecoins or specified NFTs. Thus, for example, if a customer has PDAP sales of \$9,000 using qualifying stablecoins and PDAP sales of \$500 using digital assets other than qualifying stablecoins (or specified NFTs) for a particular year, the PDAP should apply the \$600 threshold for the second set of PDAP sales to eliminate the reporting obligation on the PDAP sales of \$500. Under these facts, the PDAP would not be required to report any of the customer's digital asset transactions for the year.

In the case of a joint account, final § 1.6045-1(d)(2)(i)(C) provides a rule (by cross-reference to final § 1.6045-1(d)(10)(v)) for the broker to determine which joint account holder will be the customer for purposes of determining whether the customer's combined gross proceeds for all accounts owned exceed the \$600 *de minimis* threshold. *See* Part I.D.3.a. of this *Summary of Comments and Explanation of Revisions* for a discussion of how the *de minimis* threshold is applied to joint account holders.

Finally, because a sale under final § 1.6045-1(a)(9)(ii)(A) through (C) that is effected by brokers holding custody of the customer's digital assets or acting as the counterparty to the sale could also be structured to meet the definition of a PDAP sale effected by that broker, final § 1.6045-1(a)(9)(ii)(D) provides that any PDAP sale that is also a sale under one of the other definitions of sale under final § 1.6045-1(a)(9)(ii)(A) through (C) (non-PDAP sale) that would be subject to reporting due to the broker effecting the sale as a broker other than as a PDAP must be treated as a non-PDAP sale. Thus, if a customer instructs a custodial broker to exchange digital asset A for digital asset B, and that broker executes the transaction by

transferring payment (digital asset A) to a second person that is also a customer of that broker, the sale will be treated as a sale under § 1.6045–1(a)(9)(ii)(A)(2), not as a PDAP sale and not eligible for the \$600 *de minimis* threshold.

Similarly, if a PDAP, acting as an agent to a buyer of merchandise, receives digital assets from that buyer along with instructions to exchange those digital assets for cash to be paid to a merchant, the sale will be treated as a sale under § 1.6045–1(a)(9)(ii)(A)(1) and not as a PDAP sale. If, in this last example, the PDAP exchanges the digital assets received from the buyer for cash as an agent to the merchant and not the buyer, then the sale will be treated as a PDAP sale because the sale under § 1.6045–1(a)(9)(ii)(A)(1) would not be subject to reporting by the broker, but for the broker being a PDAP.

E. Determining Gross Proceeds and Adjusted Basis

In defining gross proceeds and initial basis in a sale transaction, the proposed information reporting regulations generally followed the substantive tax rules under proposed § 1.1001–7(b) for computing the amount realized from transactions involving the sale or other disposition of digital assets and the substantive rules under proposed § 1.1012–1(h) for computing the basis of digital assets received in transactions involving the purchase or other acquisition of digital assets. In addition, the proposed information reporting regulations generally followed the substantive tax rules proposed in §§ 1.1001–7(b) and 1.1012–1(h)(3) for determining the fair market value of property or services received or transferred by the customer in an exchange transaction involving digital assets.

1. Valuation Issues

Under longstanding legal principles, the value of property exchanged for other property received ordinarily should be equal in value. Under these principles, in an exchange of property, both the amount realized on the property transferred and the basis of the property received in an exchange, ordinarily are determined by reference to the fair market value of the property received. *See, e.g., United States v. Davis*, 370 U.S. 65 (1962); *Philadelphia Park Amusement Co. v. United States*, 126 F. Supp. 184 (Ct. Cl. 1954); Rev. Rul. 55–757, 1955–2 C.B. 557.

The proposed rules under proposed § 1.6045–1 generally followed these substantive rules for determining fair market value of property or services received by the customer in an exchange

transaction involving digital assets. Specifically, proposed § 1.6045–1(d)(5)(ii)(A) provided that in determining gross proceeds, the fair market value should be measured as of the date and time the transaction was effected. Additionally, except in the case of services giving rise to digital asset transaction costs, to determine the fair market value of services or property (including different digital assets or real property) paid to the customer in exchange for digital assets, proposed § 1.6045–1(d)(5)(ii)(A) provided that the broker must use a reasonable valuation method that looks to contemporaneous evidence of value of the services, stored-value cards, or other property. In contrast, because the value of digital assets used to pay for digital asset transaction costs is likely to be significantly easier to determine than any other measure of the value of services giving rise to those costs, the proposed regulations provided that brokers must look to the fair market value of the digital assets used to pay for digital asset transaction costs in determining the fair market value of services (including the services of any broker or validator involved in executing or validating the transfer) giving rise to those costs.

In the case of one digital asset exchanged for a different digital asset, proposed § 1.6045–1(d)(5)(ii)(A) provided that the broker may rely on valuations performed by a digital asset data aggregator using a reasonable valuation method. For this purpose, the proposed regulations provided that a reasonable valuation method looks to the exchange rate and the U.S. dollar valuations generally applied by the broker effecting the exchange as well as other brokers, taking into account the pricing, trading volumes, market capitalization, and other relevant factors in conducting the valuation. Proposed § 1.6045–1(d)(5)(ii)(C) also provided that a valuation method is not a reasonable method if the method over-weighs prices from exchangers that have low trading volumes, if the method under-weighs exchange prices that lie near the median price value, or if it inappropriately weighs factors associated with a price that would make that price an unreliable indicator of value. Additionally, proposed § 1.6045–1(d)(5)(ii)(B) provided that the broker must look to the fair market value of the services or property received if there is a disparity between the value of the services or property received and the value of the digital asset transferred in a digital asset exchange transaction. However, if the broker reasonably

determines that the value of services or property received cannot be valued with reasonable accuracy, proposed § 1.6045–1(d)(5)(ii)(B) provided that the fair market value of the received services or property must be determined by reference to the fair market value of the transferred digital asset. Finally, proposed § 1.6045–1(d)(5)(ii)(B) provided that the broker must report an undeterminable value for gross proceeds from the transferred digital asset if the broker reasonably determines that neither the digital asset nor the services or other property exchanged for the digital asset can be valued with reasonable accuracy.

The Treasury Department and the IRS solicited comments on: (1) whether the fair market value of services giving rise to digital asset transaction costs (including the services of any broker or validator involved in executing or validating the transfer) should be determined by looking to the fair market value of the digital assets used to pay for the transaction costs, and (2) whether there are circumstances under which an alternative valuation rule would be more appropriate.

The responses to these inquiries varied. One comment agreed that using the fair market value of the digital assets used as payment would be the most feasible and easily attainable means of valuing such services. A few comments stated the proposed approach would be problematic, because: (1) market prices of digital assets are highly volatile, not always reflecting the actual economic value of the services rendered, and (2) the reliance on the fair market value of the digital assets, instead of the services rendered, would be inconsistent with longstanding legal principles, resulting in significant compliance costs and recordkeeping burdens. Instead, the comments recommended that the Treasury Department and the IRS develop and re-propose alternative valuation metrics. Another comment recommended that the fair market value of the services giving rise to digital asset transaction costs should be based on the contracted price agreed to by the parties. Another comment stated that these questions rested on an improper assumption that transaction fees should be or can be calculated at a market value. This comment recommended that the final rules provide taxpayers and brokers with the option of determining the value of such services using the acquisition cost of the digital assets used as payment. One comment advised that many digital assets do not have easily ascertainable fair market values, particularly when involving services,

other digital assets, or non-standard forms of consideration.

The final regulations do not adopt the recommendations for alternative valuation approaches. As noted, except in the case of services giving rise to digital asset transaction costs, the proposed regulations required that brokers look to the value of services or property received by the customer in exchange for transferred digital assets in determining gross proceeds. Only when the services or property received cannot be valued does the broker need to look to the fair market value of the transferred digital assets. For broker services giving rise to digital asset transaction costs, the proposed regulations required brokers to look to the fair market value of the digital assets used to pay for digital asset transaction costs because it is likely to be significantly easier for brokers to determine the value of the transferred digital assets than it is to value their services. These valuation rules are reasonable and appropriate because they are consistent with *United States v. Davis*, 370 U.S. 65 (1962); *Philadelphia Park Amusement Co. v. United States*, 126 F. Supp. 184 (Ct. Cl. 1954); Rev. Rul. 55-757, 1955-2 C.B. 557, discussed previously in this Part I.E.1. The proposed alternatives do not conform with these authorities. Additionally, these rules provide practical approaches for brokers to use that are less burdensome than a rule requiring a case-specific valuation of services or other property, particularly for digital asset brokers who likely have more experience valuing digital assets transferred.

Several comments stated that brokers would need more detailed guidance on how to determine fair market value in digital asset transactions, including the reasonable methods brokers can use for assigning U.S. dollar pricing to each unique transaction. This comment recommended allowing brokers to choose a reasonable pricing methodology that is convenient for them. For example, this comment noted that it is standard industry practice today to use a daily volume weighted average price (VWAP) to value. Another comment recommended establishing a safe harbor rule that would allow a digital asset's price any time during the date of sale to be used to report gross proceeds. The final regulations do not adopt these comments because the suggested approaches are not consistent with existing case law and IRS guidance as the determination of fair market value must generally be determined at the time of the transaction. See *Cottage*

Savings Association v. Commissioner, 499 U.S. 554 (1991).

2. Allocation of Digital Asset Transaction Costs

Proposed § 1.6045-1(d)(5)(iv) and (d)(6)(ii)(C)(2) followed the substantive tax rules provided under proposed §§ 1.1001-7(b) and 1.1012-1(h) for allocating amounts paid to effect the disposition or acquisition of a digital asset (digital asset transaction costs). Specifically, these rules generally provided that in the case of a sale or disposition of digital assets, the total digital asset transaction costs paid by the customer are generally allocable to the disposition of the digital assets. Conversely, in the case of an acquisition of digital assets, the total digital asset transaction costs paid by the customer are generally allocable to the acquisition of the digital assets. The rules also provided an exception in an exchange of one digital asset for another digital asset differing materially in kind or in extent. In that case, the proposed regulations allocated one-half of any digital asset transaction cost paid by the customer in cash or property to effect the exchange to the disposition of the transferred digital asset and the other half to the acquisition of the received digital asset (the split digital asset transaction cost rule). As is discussed in Part II.B.1. of this *Summary of Comments and Explanation of Revisions*, many comments were received raising several concerns with the split digital asset transaction cost rule. For the reasons discussed in that Part, the final §§ 1.1001-7(b) and 1.1012-1(h) include revised rules to instead allocate 100 percent of the digital asset transaction costs to the disposition of the transferred digital asset in the case of an exchange of one digital asset for another digital asset differing materially in kind or in extent. Correspondingly, the final § 1.6045-1(d)(5)(iv)(B) and (d)(6)(ii)(C)(2) include revised rules to follow the final substantive tax rules and now require 100 percent of the digital asset transaction costs to be allocated to the disposition of the transferred digital asset in the case of an exchange of one digital asset for another digital asset differing materially in kind or in extent.

Comments were also received expressing concern in the case of digital asset transaction costs imposed on dispositions of digital assets used to pay those costs (cascading digital asset transaction costs). As discussed in Part II.B.4. of this *Summary of Comments and Explanation of Revisions*, the substantive rules have been revised to respond to these comments, and final

§ 1.6045-1(d)(5)(iv)(C) correspondingly provides that, in the case of a sale of digital assets in exchange for different digital assets, for which the acquired digital assets are withheld to pay the digital asset transaction costs to effect the original transaction, the total digital asset transaction costs paid by the customer to effect both the original transaction and any dispositions of digital assets to pay such costs are allocable exclusively to the original transaction. Final § 1.1012-1(h)(2)(ii)(C) includes a similar rule. Additionally, final § 1.6045-1(d)(6)(ii)(C)(2) follows this rule by cross referencing the rules at final § 1.6045-1(d)(5)(iv)(C).

3. Ordering Rules

a. Adequate Identification of Digital Assets

The proposed information reporting regulations provided ordering rules for a broker to determine which units of the same digital asset should be treated as sold when the customer previously acquired, or had transferred in, multiple units of that same digital asset on different dates or at different prices by cross referencing the identification rules in the proposed substantive tax law regulations. Specifically, proposed § 1.1012-1(j)(3)(ii) provided that the taxpayer can make an adequate identification of the units sold, disposed of, or transferred by specifying to the broker, no later than the date and time of sale, disposition, or transfer, the particular units of the digital asset to be sold, disposed of, or transferred by reference to any identifier (such as purchase date and time or purchase price paid for the units) that the broker designates as sufficiently specific to allow it to determine the basis and holding period of those units. The units so identified, under the proposed regulations, are treated as the units of the digital asset sold, disposed of, or transferred to determine the basis and holding period of such units. This identification must also be taken into consideration in identifying the taxpayer's remaining units of the digital asset for purposes of subsequent sales, dispositions, or transfers. Identifying the units sold, disposed of, or transferred solely on the taxpayer's books or records is not an adequate identification of the digital assets if the assets are held in the custody of a broker.

To make the final regulations more accessible for brokers, the final regulations set forth the identification rules in final § 1.6045-1(d)(2)(ii)(B) as well as in final § 1.1012-1(j)(3) for taxpayers. A few comments criticized proposed § 1.1012-1(j)(3)(i) for requiring

an adequate identification of digital assets held in the custody of brokers to be made no later than the date and time of the transaction. One comment advised that the proposed rule would provide less flexibility than currently allowed for making an adequate identification of stock under § 1.1012–1(c)(8). The limited flexibility, the comment warned, would pose as “a trap for the unwary” for some taxpayers. The final regulations do not adopt these comments. On the contrary, the volatile nature of digital assets and their markets makes the timing requirement necessary. The proposed rule is analogous to § 1.1012–1(c)(8) because settlement for securities takes place one or more days after a trade while the settlement period for digital asset transactions is typically measured in minutes. In both cases, a specific identification must be made before the relevant asset is delivered for settlement. Accordingly, the Treasury Department and the IRS have determined that the timing requirement for adequate identifications does not pose an undue burden on taxpayers, and the final rules retain the principles set forth in proposed § 1.1012–1(j)(3)(i).

One comment recommended that the final rules adopt a more flexible, principles-based approach for identifying digital assets held in the custody of brokers that would allow brokers the flexibility to implement basis identification in a manner that fits their particular systems and business models, so long as the end result provides sufficient transparency and accuracy. The Treasury Department and the IRS have determined that a uniform rule is preferable to the proposed discretionary rule because of administrability concerns and because it does not result in an undue burden for brokers. As a result, the Treasury Department and the IRS do not adopt this recommendation.

A few comments recommended the inclusion of a rule allowing taxpayers to make adequate identifications by standing orders so taxpayers would be able to make these identifications using a predetermined set of parameters rather than making them on a per-transaction basis, for example, uniformly identifying the highest cost or closest cost basis available. The final regulations adopt this recommendation. Accordingly, final §§ 1.1012–1(j)(3)(ii) and 1.6045–1(d)(2)(ii)(B)(2) include a rule allowing taxpayers to use a standing order or instruction to make adequate identifications.

Another comment requested guidance on whether a taxpayer would be treated as having made an adequate

identification under proposed § 1.1012–1(j)(3)(ii) if the notified broker is only able to offer one method by which identifications can be made for units of a digital asset held in the broker’s custody. The final regulations adopt a clarification pursuant to this comment. Accordingly, in the case of a broker who only offers one method by which a taxpayer may make a specific identification for units of a digital asset held in the broker’s custody, final §§ 1.1012–1(j)(3)(ii) and 1.6045–1(d)(2)(ii)(B)(2) treat such method as a standing order or instruction for the specific identification of the digital assets, and thus as an adequate identification unless the special rules in final §§ 1.1012–1(j)(3)(iii) and 1.6045–1(d)(2)(ii)(B)(3) apply.

Another comment requested clarification on whether an email sent by a taxpayer would satisfy the broker-notification requirement of proposed § 1.1012–1(j)(3)(ii). The Treasury Department and the IRS have determined that it would be most appropriate to allow brokers the discretion to determine the forms by which a notification can or must be made and whether a particular type of notification, by email or otherwise, is sufficiently specific to identify the basis and holding period of the sold, disposed of, or transferred units. Accordingly, to provide brokers with maximum flexibility, the final regulations do not adopt a rule concerning the form of the notification.

A few comments recommended against the proposed regulations’ use of similar ordering rules for digital assets as apply to stocks because blockchains are uniquely different from traditional financial systems. The final regulations do not adopt this comment. Although some digital assets may differ in certain ways from other asset classes, the Treasury Department and the IRS have concluded that the proposed ordering rules provide the most accurate methodology to determine basis and holding period of digital assets.

As discussed in Part VI.C. of this *Summary of Comments and Explanation of Revisions*, the final regulations add a default specific identification rule to avoid the need to separately report and backup withhold on certain units withheld in a transaction to pay other costs. In particular, in a transaction involving the sale of digital assets in exchange for different digital assets and for which the broker withholds units of the digital assets received in the exchange to pay the customer’s digital asset transaction costs or to satisfy the broker’s obligation under section 3406 to deduct and

withhold a tax with respect to the underlying transaction, final §§ 1.1012–1(j)(3)(iii) and 1.6045–1(d)(2)(ii)(B)(3) provide that the withheld units when sold will be treated as coming from the units received regardless of any other adequate identification (including standing order) to the contrary.

This special default specific identification rule ensures that the disposition of the withheld units will not give rise to gain or loss. Final § 1.6045–1(c)(3)(ii)(C) provides that the units that are so withheld for the purpose of paying the customer’s digital asset transaction costs are exempt from reporting, thus minimizing the burden on brokers who would have to otherwise report on this low value (and no gain or loss) transaction and any other further withheld units to pay for cascading transaction fees that do not give rise to gains or losses. As discussed in Part VI.C. of this *Summary of Comments and Explanation of Revisions*, although units that are so withheld for the purpose of satisfying the broker’s obligation under section 3406 to deduct and withhold a tax with respect to the underlying transaction also do not give rise to gain or loss, final § 1.6045–1(c)(3)(ii)(D) provides that these units are only exempt from reporting if the broker sells the withheld units for cash immediately after the underlying sale. The latter limitation was added to the reporting exemption to decrease the valuation risks of units withheld for the purpose of satisfying the broker’s backup withholding obligations. See Part VI.B. of this *Summary of Comments and Explanation of Revisions*, for a more detailed discussion of these valuation risks.

b. No Identification of Units Made

In cases where a customer does not provide an adequate identification by the date and time of sale, proposed § 1.6045–1(d)(2)(ii)(B) provided that the broker should treat the units of the digital asset that are sold as the earliest units of that type of digital asset that were either purchased within or transferred into the customer’s account with the broker. The proposed regulations provided that units of a digital asset are treated as transferred into the customer’s account as of the date and time of the transfer.

Numerous comments raised concerns with the rule requiring brokers to treat units transferred into the customer’s account as if they were purchased on the transfer-in date without regard to whether the customer provided the broker with actual purchase date information because it is inconsistent

with the default identification rule, which requires that the units sold be based on actual purchase dates. As such, these comments noted, the rule will disrupt the reasonable expectations of brokers and customers that make a good faith effort to track lots and basis to have lot identifications align. Additionally, one comment raised the concern that this ordering rule would force custodial brokers to keep track of multiple acquisition dates for customers, one for broker ordering purposes and another for the customer's cost-basis purposes. Another comment recommended that exceptions to the ordering rule be made to enhance accuracy, align tax treatment with real-world transactions, and minimize reporting errors. One comment recommended allowing brokers the option of applying the existing first-in-first-out (FIFO) rules for securities brokers, provided they do so consistently. For a discussion of the FIFO rules, see Part II.C.3. of this *Summary of Comments and Explanation of Revisions*. That is, until rules under section 6045A rules are in place, this comment recommended that the final regulations allow brokers to rely upon records generated in the ordinary course of the broker's business that evidence the customer's actual acquisition date for a digital asset, either because another broker provided that information or the customer provided it upon transfer, unless the broker knows that information is incorrect.

The Treasury Department and the IRS solicited comments on whether there were any alternatives to requiring that the ordering rules for digital assets left in the custody of a broker be followed on an account-by-account basis, for example, if brokers have systems that can otherwise account for their customers' transactions. Several comments advised against the adoption of account-based ordering rules, viewing such rules as imposing unnecessary costs and technical challenges, impeding industry innovation, and ignoring the current industry practice of using omnibus accounting structures or transaction aggregation. Instead, these comments recommended the adoption of discretionary ordering rules for digital assets left in the custody of brokers that would allow brokers to decide how to track and report the basis of these digital assets. Another comment recommended that the final rules adopt a more flexible, principles-based approach for digital assets in the custody of a broker that would allow brokers the flexibility to implement basis identification in a manner that fit

their systems and business models, so long as the result provides sufficient transparency and accuracy. Another comment recommended that brokers be allowed to apply more flexible "lot-relief" ordering rules. Another comment recommended that the final rules require the consistent application of a uniform rule for identifying digital assets in the custody of a broker. Consistency, the comment advised, would be key to maintaining the integrity of cost basis for transfers of digital assets in the custody of a broker between brokers and eliminating the need for taxpayers to reconcile discrepancies. The final regulations do not adopt the recommendations to provide brokers with the discretion to implement their preferred ordering rules for digital assets in the custody of brokers. The Treasury Department and the IRS have determined that a uniform rule is preferable to the proposed discretionary rule because of administrability concerns and because having all brokers follow a single, consistent method does not result in an undue burden for brokers.

Numerous comments requested that the final regulations provide safe harbor penalty relief to brokers that rely on reasonably reliable outside data that supplies purchase-date information. In this regard, several comments noted that the aggregation market offers software solutions to track digital assets as they move through the blockchain ecosystem, thus enabling these aggregators to keep meticulous records of taxpayers' digital asset tax lots. Accordingly, these comments opined that purchase date information from these aggregators constitutes reasonably reliable purchase-date information. Although one comment suggested that any information provided by a customer should be considered reasonably reliable, other comments had more specific suggestions, such as email purchase/trade confirmations from other brokers or immutable data on a public distributed ledger. Other comments suggested that brokers should also be allowed to consider purchase date information received from independent third parties, such as official platform records from recognized digital asset trading platforms, because these records are typically subject to regulatory oversight and verification. Another comment recommended that brokers be allowed to rely upon records audited by reputable third party firms that undergo rigorous verification processes as well as information from any government-approved source or tax authority.

The Treasury Department and the IRS have determined that inconsistencies

between broker records and customer records regarding digital asset lots in the custody of a broker may give rise to complexities and reporting inaccuracies. Accordingly, final § 1.6045-1(d)(2)(ii)(B)(4) provides that a broker may take into account customer-provided acquisition information for purposes of identifying which units are sold, disposed of, or transferred under the identification rules. Customer-provided acquisition information is defined as reasonably reliable information, such as the date and time of acquisition units of a digital asset, provided to the broker by a customer or the customer's agent no later than the date and time of a sale, disposition, or transfer. Reasonably reliable information for this purpose includes purchase or trade confirmations at other brokers or immutable data on a public distributed ledger. A broker that takes into account customer-provided acquisition information for purposes of identifying which units are sold, disposed of, or transferred is deemed to have relied upon this information in good faith if the broker neither knows nor has reason to know that the information is incorrect for purposes of the information reporting penalties under sections 6721 and 6722. This penalty relief does not apply, however, to a broker who takes into account customer-provided acquisition information for purposes of voluntarily reporting the customer's basis. The Treasury Department and the IRS, notwithstanding, plan to study further the types of information that could be included in customer-provided acquisition information to determine if certain information is sufficiently reliable to permit reporting the customer's basis. Finally, it should be noted that, although taxpayers may in some cases be entitled to penalty relief from reporting incorrect amounts on their Federal income tax returns due to reasonable cause reliance on information included on a Form 1099, this relief would not be permitted to the extent the information included on that Form is due to incomplete or incorrect customer-provided acquisition information.

Final § 1.6045-1(d)(2)(i)(B)(8) requires brokers to report on whether they relied upon such customer-provided acquisition information in identifying the unit sold to alert customers and the IRS that the information supplied on the Form 1099-DA is, in part, based on customer-provided acquisition information described in final § 1.6045-1(d)(2)(ii)(B)(4). Under this rule, if the broker takes into account customer-

provided acquisition information in determining which unit was sold, the broker must report that it has done so, regardless of whether information on the particular unit sold was derived from the broker's own records or from the customer or its agent. The Treasury Department and the IRS anticipate that brokers will likely identify all units sold as relying on customer-provided acquisition information for customers that regularly transfer digital assets to that broker and provide that broker with customer-provided acquisition information.

Final § 1.6045–1(d)(2)(ii)(B) revises the rule in proposed § 1.6045–1(d)(2)(ii)(B) for the identification of the digital asset unit sold so that it also applies to dispositions and other transfers as well as sales because brokers need clear identification rules for these transactions to ensure they have the information they need about the digital assets that are retained in the customer's account. Additionally, the final regulations add a rule to accommodate the unlikely circumstance in which the broker does not have any transfer-in date information about the units in the broker's custody—such as could be the case if the broker's transfer-in records are destroyed and the broker has not received any reasonably reliable acquisition date information from the customer or the customer's agent. Addressing that circumstance, final § 1.6045–1(d)(2)(ii)(B)(1) provides that in cases in which the broker does not receive an adequate identification of the units sold from the customer by the date and time of the sale, disposition, or transfer, and in which the broker does not have adequate transfer-in date records and does not have or take into account customer-provided acquisition information, the broker must first report the sale, disposition, or transfer of units that were not acquired by the broker for the customer. Thereafter, the broker must treat units as sold, disposed of, or transferred in order of time from the earliest date on which units of the same digital asset were acquired by the customer. A broker may take into account customer-provided acquisition information described in final § 1.6045–1(d)(2)(ii)(B)(4) to determine when units of a digital asset were acquired by the customer if the broker neither knows nor has reason to know that the information is incorrect. For this purpose, unless the broker takes into account customer-provided acquisition information, the broker must treat units of a digital asset that are transferred into the customer's account as acquired as of the date and time of the transfer.

Finally, while it is inevitable that some customers will fail to provide their brokers with reasonably reliable acquisition information or that brokers will decline in some circumstances to rely upon customer-provided acquisition information, customers nonetheless can avoid lot identification inconsistencies by adopting a fallback standing order to track lots in a manner consistent with the broker's tracking requirements.

Finally, one comment requested that the final regulations set forth the procedures the IRS will follow when a broker's reported cost basis amount does not match the cost basis reported by customers due to lot identification inconsistencies. The final regulations do not adopt this comment as being outside the scope of these regulations.

F. Basis Reporting Rules

Section 6045(g) requires a broker that is otherwise required to make a return under section 6045(a) with respect to covered securities to report the adjusted basis with respect to those securities. Under section 6045(g)(3)(A), a covered security is any specified security acquired on or after the acquisition applicable date if the security was either acquired through a transaction in the account in which the security is held or was transferred to that account from an account in which the security was a covered security, but only if the broker received a transfer statement under section 6045A with respect to that security. Because rulemaking under section 6045A with respect to digital assets was not proposed, much less finalized, the proposed regulations limited the definition of a *covered security* for purposes of digital asset basis reporting to digital assets that are acquired in a customer's account by a broker providing hosted wallet services (that is, custodial services for such digital assets). Accordingly, under the proposed regulations, mandatory basis reporting was only required for sales of digital assets that were previously acquired, held until sale, and then sold by a custodial broker for the benefit of a customer.

One comment raised the concern that brokers do not have access to cost-basis information with respect to transactions that are effected by other brokers. This comment recommended that the final regulations delay requiring brokers to report adjusted basis until the purchase information sharing mechanism under section 6045A is implemented. The proposed regulations did not require basis reporting for sale transactions effected by custodial brokers of digital assets that were *not* previously acquired

by that broker in the customer's account. Accordingly, the final regulations do not adopt this comment. However, a clarification has been made to final § 1.6045–1(d)(2)(i)(D) in order to avoid confusion on this point.

Section 80603(b)(1) of the Infrastructure Act added digital assets to the list of specified securities for which basis reporting is specifically required and provided that a digital asset is a covered security if it is acquired on or after January 1, 2023 (the acquisition applicable date for digital assets). Based on this specific authority provided by the Infrastructure Act, the proposed regulations provided that for each sale of a digital asset that is a covered security for which a broker is required to make a return of information, the broker must also report the adjusted basis of the digital asset sold, the date and time the digital asset was purchased, and whether any gain or loss with respect to the digital asset sold is long-term or short-term (within the meaning of section 1222 of the Code). Additionally, proposed § 1.6045–1(a)(15)(i)(j) modified the definition of a *covered security* for which adjusted basis reporting would be required to include digital assets acquired in a customer's account on or after January 1, 2023, by a broker providing hosted wallet services.

Several comments raised the concern that adjusted basis reporting for digital assets acquired before the applicability date of the regulations would make accurate reporting of adjusted basis difficult and, in some cases, impossible. These comments instructed that, to accurately track the adjusted basis of digital assets in an account, brokers need not only purchase price information but also clear lot ordering rules to be sure that the basis of a digital asset sold is removed from the basis pool of the digital assets remaining in the account. Additionally, these comments noted that, the basis reported to customers will not be accurate unless customers applied the same lot ordering rules. The comments also indicated that taxpayers do not have the means to provide brokers with adequate identification of shares they previously sold. Thus, while brokers likely have information about digital assets acquired on or after January 1, 2023, because there were no clear ordering rules in place for transactions that took place on or after January 1, 2023, brokers will not know which lots their customers previously reported as sold between January 1, 2023 and the January 1, 2026 date their systems are in place to allow for cost-basis reporting under these final regulations. Thus,

brokers do not have the information necessary to track the basis of the digital assets that remain in the customer's account.

Several comments also raised the concern that brokers need time, not only to capture the original cost basis for digital asset lots and to build systems to track adjusted basis of digital assets consistent with the ordering rules in the final regulations, but also to build systems capable of performing complex adjustments for gifting and other blockchain events. While one comment indicated that the earliest that brokers could implement adjusted basis tracking is January 1, 2025, other comments stated that brokers should not be required to start building (or revising existing systems) until these regulations are final. Accordingly, these comments recommended aligning the acquisition applicable date for digital assets with the proposed January 1, 2026, applicable date for basis reporting to allow digital asset brokers to build basis reporting systems and basis tracking systems at the same time.

The Treasury Department and the IRS considered these comments. Despite the critical value of adjusted basis tracking and reporting to the broker's customers and to overall tax administration, the final regulations adopt the recommendation made by these comments to align the acquisition applicable date for digital assets with the January 1, 2026, applicability date for adjusted basis reporting. The Treasury Department and the IRS, however, strongly encourage brokers to work with their customers who, as described in Part II.C.2. of this *Summary of Comments and Explanation of Revisions*, are subject to the new ordering rules for transactions beginning on or after January 1, 2025, to facilitate an earlier transition to these new basis tracking rules to the extent possible.

The proposed regulations required adjusted basis reporting for sales of digital assets treated as covered securities and for non-digital asset options and forward contracts on digital assets only to the extent the sales are effected on or after January 1, 2026, in order to allow brokers additional time to build appropriate reporting and basis retrieval systems. Several comments requested a delay in the proposed applicability date for basis reporting. One comment suggested that further delay was warranted because the applicability date for digital asset basis reporting is not consistent with the length of time that stockbrokers were given to implement cost basis reporting rules.

The final regulations do not adopt this request for a delay for several reasons. First, brokers have been on notice that cost basis reporting in some form would be required since the Infrastructure Act was enacted in 2021. Second, many brokers already have systems in place to report cost basis to their customers as a service and other brokers have contracts with third party service providers to do the same. Third, cost basis reporting is essential to taxpayers and the IRS to ensure that gains and losses are accurately reported on taxpayers' Federal income tax returns. Fourth, the initial applicability date for cost basis reporting for digital assets—over four years after the Infrastructure Act was enacted—is not inconsistent with the initial 2011 implementation of the cost basis reporting rules for stockbrokers, which was only three years after the Energy Improvement and Extension Act of 2008 was enacted. Notwithstanding this decision, the IRS intends to work closely with stakeholders to ensure the smooth implementation of the basis reporting rules, including the mitigation of penalties in the early stages of implementation for all but particularly egregious cases involving intentionally disregarding these rules.

G. Exceptions To Reporting of Sales Effected by Brokers on Behalf of Exempt Foreign Persons and Non-U.S. Broker Reporting

1. In General

The proposed regulations provided the same exceptions to reporting in § 1.6045-1(c) for exempt recipients and excepted sales for brokers effecting sales of digital assets (digital asset brokers) that are in the final regulations for securities brokers. Similar to the case of a securities broker effecting a sale of an asset other than a digital asset, the proposed regulations provided an exception to a broker's reporting of a sale of digital assets effected for a customer that is an exempt foreign person and requirements for applying the exception. See § 1.6045-1(g)(1) through (3) (for sales other than digital assets) and proposed § 1.6045-1(g)(4) (for sales of digital assets). For a broker to treat a customer as an exempt foreign person for a sale of a digital asset, the proposed regulations provided requirements for valid documentation of foreign status, standards of knowledge for a broker's reliance on this documentation, and presumption rules in the absence of documentation that may be relied upon to determine a customer's status as a U.S. or foreign person. Under the proposed regulations, these requirements differed in certain

respects depending on the broker's status as a U.S. digital asset broker, a non-U.S. digital asset broker, a controlled foreign corporation (CFC), a digital asset broker conducting activities as a money services business (MSB), or as a non-U.S. digital asset broker or a CFC digital asset broker not conducting activities as an MSB (each as defined in the proposed regulations). See proposed § 1.6045-1(g)(4)(i). A broker's status within one of the foregoing categories also dictated whether a sale of digital assets was considered effected at an office either inside or outside the United States, a determination that in some cases dictated whether a broker was treated as a broker for a sale of a digital asset under proposed § 1.6045-1(a)(1) and whether the exception to backup withholding under § 31.3406(g)-1(e) applied to a sale that is reportable. See proposed § 1.6045-1(a)(1) (defining broker).

Under the proposed regulations, a U.S. digital asset broker is a U.S. payor or middleman as defined in § 1.6049-5(c)(5), other than a CFC, that effects sales of digital assets on behalf of others. A U.S. payor or middleman includes a U.S. person (including a foreign branch of a U.S. person), a CFC (as defined in § 1.6049-5(c)(5)(i)(C)), certain U.S. branches that agree to be treated as U.S. persons, a foreign partnership with controlling U.S. partners or a U.S. trade or business, and a foreign person for which 50 percent or more of its gross income is effectively connected with a U.S. trade or business. Thus, a U.S. digital asset broker included both U.S. persons and certain categories of non-U.S. persons (other than CFCs). Because it is a U.S. payor or middleman, a U.S. digital asset broker is a broker under proposed § 1.6045-1(a)(1) with respect to all sales of digital assets it effects for its customers, such that the broker must report with respect to a sale absent an applicable exception to reporting. To except reporting based on a customer's status as an exempt foreign person, a U.S. digital asset broker must have obtained a withholding certificate (that is, an applicable Form W-8) to which it must have applied certain reliance requirements when it was not permitted to treat the customer as a foreign person under a presumption rule. If a U.S. digital asset broker was not permitted to treat a customer as an exempt foreign person and failed to obtain a valid Form W-9 for the customer when required under § 1.6045-1(c), backup withholding under section 3406 applied to proceeds from digital assets sales made on behalf of the customer.

The proposed regulations also specified requirements for foreign

brokers that are not U.S. digital asset brokers for sales of digital assets. Under the proposed regulations, a broker effecting sales of digital assets that is not a U.S. digital asset broker is either a CFC digital asset broker or a non-U.S. digital asset broker, which have different requirements depending on whether they conduct activities as a MSB. A non-U.S. digital asset broker or CFC digital asset broker conducts activities as an MSB under the proposed regulations when it is registered with the Department of the Treasury under 31 CFR part 1022.380 (or any successor guidance) as an MSB, as defined in 31 CFR part 1010.100(ff). The requirements for non-U.S. digital asset brokers and CFC digital asset brokers conducting activities as MSBs reference the requirements that apply to a U.S. digital asset broker. In the case of a CFC digital asset broker not conducting activities as an MSB, the broker is (similar to a U.S. digital asset broker) a U.S. payor or middleman, such that it is a broker under proposed § 1.6045–1(a)(1) with respect to all sales of digital asset it effects for its customers. Unlike a U.S. digital asset broker, however, a CFC digital asset broker not conducting activities as an MSB was not permitted to treat a customer as an exempt foreign person based on certain documentary evidence supporting the customer's foreign status (in lieu of a Form W–8), and, because sales of digital assets it effects for customers are treated as effected at an office outside the United States, the exception to backup withholding in proposed § 31.3406(g)–1(e) applied to a sale reportable by the broker.

In the case of a non-U.S. digital asset broker not conducting activities as an MSB, more limited requirements applied than those that applied to other digital asset brokers. Under the proposed regulations, unless the broker collects certain information about a customer that shows certain specified “U.S. indicia,” the broker has no reporting or backup withholding requirements under the proposed regulations. If the broker has such U.S. indicia for a customer, a sale effected for the customer is treated as effected at an office of the broker inside the United States. In that case, the broker was required to report with respect to a sale of a digital asset it effected for the customer when required under § 1.6045–1(c) unless it was permitted to treat the customer as an exempt foreign person based on certain documentary evidence or a withholding certificate it was permitted to rely upon, or when the broker was permitted to treat the

customer as a foreign person under a presumption rule. Finally, the exception to backup withholding in proposed § 31.3406(g)–1(e) would have applied to a sale of digital assets reportable by a non-U.S. digital asset broker not conducting activities as an MSB.

2. Non-U.S. Digital Asset Brokers and the CARF

Several comments on the proposed regulations' rules requiring non-U.S. brokers to report information on digital asset transactions recommended that the rules be revised to provide that non-U.S. brokers that are reporting information on U.S. customers to other jurisdictions under the CARF should not be required to report information to the IRS and should not have to obtain a separate U.S. certification from a customer. Other comments requested that the implementation of rules for non-U.S. brokers be delayed until they are harmonized with the CARF. Other comments relating to the proposed regulations' rules requiring non-U.S. brokers to report information on digital asset transactions recommended that a single diligence standard apply to all non-U.S. brokers.

The Treasury Department and the IRS agree that rules requiring non-U.S. brokers to report information on digital asset transactions should be revised in order to allow for the implementation of the CARF by the United States. As described in the preamble to the proposed regulations, under the CARF, the IRS would provide information on foreign persons for whom U.S. brokers effect sales of digital assets to other countries that have implemented the CARF and receive information from those countries about transactions by U.S. persons with non-U.S. digital asset brokers. Regulations implementing the CARF would exempt non-U.S. brokers that are reporting information on U.S. customers to jurisdictions that exchange information with the IRS pursuant to an automatic exchange of information mechanism from reporting information on such U.S. customers to the IRS under section 6045. This would mean that such non-U.S. brokers would not be required to report information on U.S. customers to both the IRS and a foreign tax administration that is exchanging information with the IRS. The rules provided in the proposed regulations, when finalized and as revised to take into account comments received on diligence standards and other issues, therefore would be expected to apply only to a limited set of non-U.S. brokers in jurisdictions that do not implement the CARF and exchange digital asset information with the United States.

Accordingly, the final regulations reserve on the rules requiring non-U.S. brokers to report information on U.S. customers to the IRS, in order to coordinate the rules for non-U.S. brokers under section 6045 with new rules that will implement the CARF.

The Treasury Department and the IRS intend to propose regulations that would, if finalized, implement CARF in sufficient time for the United States to begin exchanges of information with appropriate partner jurisdictions in 2028 with respect to transactions effected in the 2027 calendar year. It is anticipated that those proposed regulations also would require U.S. digital asset brokers to report information on their foreign customers resident in such jurisdictions, so that the IRS could provide that information to those jurisdictions pursuant to automatic exchange of information mechanisms. Since the proposed CARF regulations would require additional reporting by U.S. digital asset brokers, the final regulations have been drafted taking the CARF definitions into account where feasible in order to minimize differences between the types of information that U.S. digital asset brokers are required to report under the final regulations and under forthcoming proposed CARF regulations. It is anticipated, however, that the information required to be reported by U.S. digital asset brokers under the forthcoming proposed CARF regulations would differ from the information required to be reported under the final regulations in significant ways. For example, the CARF requires reporting of acquisitions and transfers of digital assets, requires all reporting to take place on an aggregate basis, and has different rules for reporting of stablecoins than the final regulations.

As the final regulations reserve on the rules of § 1.6045–1(g)(4) relating to non-U.S. brokers, the final regulations limit the definition of a U.S. digital asset broker for purposes of applying the provisions of § 1.6045–1(g)(4). For these brokers, these provisions include documentation, reliance, and presumption rules to determine whether they may treat customers as exempt foreign persons. The final regulations indicate as reserved those paragraphs of the proposed regulations that addressed definitions or requirements specific to brokers that are not U.S. digital asset brokers. For example, the final regulations reserve the rules for CFC digital asset brokers, non-U.S. digital asset brokers conducting activities as money service businesses and other non-U.S. digital asset brokers that were described in proposed § 1.6045–1(g)(4).

As a result, the remainder of this Part I.G. discusses those comments relevant to U.S. digital asset brokers (or digital asset brokers generally) and excludes discussion of comments specific to only non-U.S. brokers. Comments specific to non-U.S. brokers will be addressed as part of future regulations.

3. Revised U.S. Indicia for Brokers To Rely on Documentation

As referenced in Part I.G.1. of this *Summary of Comments and Explanation of Revisions*, under the proposed regulations a digital asset broker is subject to specified requirements for relying on a Form W-8 to treat a customer as an exempt foreign person. With respect to a Form W-8 that is a beneficial owner withholding certificate, the proposed regulations provided that a digital asset broker may rely on the certificate unless the broker has actual knowledge or reason to know that the certificate is unreliable or incorrect. Similar to a securities broker effecting a sale, a digital asset broker is treated as having “reason to know” that a beneficial owner withholding certificate for a customer is unreliable or incorrect based on certain indicia of the customer’s U.S. status (U.S. indicia), which are for this purpose cross-referenced in proposed § 1.6045–1(g)(4)(vi)(B) to the U.S. indicia in proposed § 1.6045–1(g)(4)(iv)(B)(1) through (5) (setting forth the U.S. indicia relevant to a non-U.S. digital asset broker’s requirements under the proposed regulations).

The U.S. indicia in proposed § 1.6045–1(g)(4)(iv)(B)(1) through (5) included the U.S. indicia in § 1.1441–7(b)(5), which generally apply to determine when a U.S. withholding agent is treated as having “reason to know” that a beneficial owner withholding certificate is unreliable or incorrect and which are also applied for that purpose to a securities broker effecting a sale. *See* § 1.6045–1(g)(1)(ii). Proposed § 1.6045–1(g)(4)(iv) further includes as U.S. indicia the following: (1) a customer’s communication with the broker using a device (such as a computer, smart phone, router, server or similar device) that the broker has associated with an internet Protocol (IP) address or other electronic address indicating a location within the United States; (2) cash paid to the customer by a transfer of funds into an account maintained by the customer at a bank or financial institution in the United States, cash deposited with the broker by a transfer of funds from such an account, or if the customer’s account is linked to a bank or financial account

maintained within the United States; or (3) one or more digital asset deposits into the customer’s account at the broker were transferred from, or digital asset withdrawals from the customer’s account were transferred to, a digital asset broker that the broker knows or has reason to know to be organized within the United States, or the customer’s account is linked to a digital asset broker that the broker knows or has reason to know to be organized within the United States. As noted in the preamble to the proposed regulations, the additional U.S. indicia were included to account for the digital nature of the activities of digital asset brokers, including that they do not typically have physical offices and communicate with customers by digital means rather than by mail.

Many comments were received that raised issues with the proposed new U.S. indicia. Some comments noted coordination issues that could arise from the new indicia for brokers effecting sales of both securities and digital assets. These comments requested that the U.S. indicia for digital asset brokers be aligned with the U.S. indicia applicable to traditional financial brokers so that brokers effecting sales in both capacities could avoid maintaining parallel systems to monitor differing U.S. indicia depending on the type of sale. A comment noted that some securities brokers may transact only digitally with customers, such that the stated reasoning for the new U.S. indicia is not limited to digital asset brokers.

Other comments objected to one or more of the specified new U.S. indicia, questioning the usefulness of certain of the indicia for identifying potential U.S. customers and noting excessive burdens on brokers in tracking the required information. They noted that IP addresses are not reliable indicators of a customer’s residence given that the location indicated by an IP address will change when customers travel outside of their countries of residence and can be masked by the use of a virtual private network (VPN) so that a customer’s actual location cannot be determined. A comment noted that the proposed regulations do not describe whether an IP address would be required to be checked for all contacts with the customer as they do not define a “customer contact” for this purpose.

Some comments raised concerns with the U.S. indicia relating to transfers effected for customers to and from U.S. bank accounts and U.S. digital asset brokers. Certain of those comments noted that the proposed regulations do not specify how a broker should

determine that a customer’s transfer is to or from a U.S. digital asset broker, with one comment suggesting an actual knowledge standard be permitted, and another comment suggesting that the IRS publish a list of U.S. digital asset brokers. Another comment noted that a customer’s dealings with U.S. digital asset brokers or U.S. banks is not a good indication of a customer’s U.S. status. Finally, some comments noted that requiring determinations of U.S. status for every transfer would add burdens on digital asset brokers that exceed those resulting from the static forms of U.S. indicia that apply to securities brokers (such as for standing instructions to pay amounts to a U.S. account) and may be read to require documentation cures at multiple times.

Because the comments raise concerns sufficient for the Treasury Department and the IRS to reconsider the additional U.S. indicia, the final regulations do not include any of the additional U.S. indicia that are in the proposed regulations for U.S. digital asset brokers. Thus, for purposes of the reliance requirements of U.S. digital asset brokers, the final regulations include only the U.S. indicia generally applicable to U.S. securities brokers. The Treasury Department and the IRS intend to consider whether additional U.S. indicia should be part of the proposed requirements that would be applicable to non-U.S. digital asset brokers (as referenced in Part I.G.2. of this *Summary of Comments and Explanation of Revisions*).

4. Transitional Determination of Exempt Foreign Status

To provide additional time for digital asset brokers to collect the necessary documentation to treat existing customers as exempt foreign persons, the proposed regulations provided a transitional rule for a broker to treat a customer as an exempt foreign person for sales of digital assets effected before January 1, 2026, that were held in a preexisting account established with a broker before January 1, 2025. A broker may apply this transitional rule if the customer has not been previously classified as a U.S. person by the broker, and information the broker has for the customer includes a residence address that is not a U.S. address. *See* proposed § 1.6045–1(g)(4)(vi)(F).

No comments were received in response to this proposed rule. The final regulations include this transitional relief. The dates for which relief will apply have been modified to apply to sales effected before January 1, 2027, that were held in an account established with a broker before January 1, 2026.

5. Certification of Individual Customer's Presence in U.S.

With respect to the requirements for a valid beneficial owner withholding certificate provided by a customer to a broker to treat the customer as an exempt foreign person, the proposed regulations stated that a beneficial owner withholding certificate provided by an individual (that is, a Form W-8BEN) must include a certification that the beneficial owner has not been, and at the time the certificate is furnished reasonably expects not to be, present in the United States for 183 days or more during each calendar year to which the certificate pertains. See proposed § 1.6045-1(g)(4)(ii)(B). This certification is based on the same requirement applicable to a securities broker in § 1.6045-1(g)(1)(i) to allow the broker to rely on a beneficial owner withholding certificate to treat an individual as an exempt foreign person. One comment stated that this certification requirement would not add sufficient value or reliability to a standard or substitute Form W-8BEN and further noted that language relating to the substantial presence test is included only in the instructions for Form W-8BEN, with a cross-reference in the form's jurat. The comment thereby asserted that an individual may be unaware they are attesting to this standard when they sign a Form W-8BEN. The comment suggested that this language be removed in the final regulations.

As referenced in the comment, this certification relates to a customer's potential classification as a U.S. individual under the substantial presence test in § 301.7701(b)-1(c). It also relates to whether an individual customer is subject to tax on capital gains from sales or exchanges under section 871(a)(2) of the Code when the individual remains a resident alien under section 7701(b)(3)(B) of the Code despite being present in the United States for 183 days or more during a year. As indicated in the preamble to the proposed regulations, Form W-8BEN specifically requires that an individual certify to the individual's status as an exempt foreign person in accordance with the instructions to the form, which include this requirement (relating to broker and barter transactions associated with the form). Thus, this certification is both sufficiently described in the proposed regulations with respect to its reference to Form W-8BEN and relevant to an individual's claim of exempt foreign person status. Moreover, this certification is required today for Forms W-8BEN collected by securities brokers

and the Treasury Department and the IRS have determined that the same certification should be required for Forms W-8BEN collected by digital asset brokers. Thus, this comment is not adopted, and this certification requirement is included in the final regulations for a beneficial owner withholding certification provided to a U.S. digital asset broker. In response to this comment, the IRS may consider revising Form W-8BEN or its instructions to highlight this requirement more prominently for individuals completing the form.

6. Substitute Forms W-8

As described in Part I.G.1. of this *Summary of Comments and Explanation of Revisions*, the proposed regulations provided that a digital asset broker may treat a customer as an exempt foreign person if the broker receives a valid Form W-8 upon which it may rely. They also permit a broker to rely upon a substitute Form W-8 that meets the requirements of § 1.1441-1(e)(4). See proposed § 1.6045-1(g)(4)(ii)(B) and (g)(4)(vi)(A)(1). Some comments requested that the final regulations be amended to allow substitute certification forms based on other reporting regimes to reduce broker compliance burdens, reduce customer confusion, and streamline global information reporting. Some comments specially suggested that FATCA or Common Reporting Standard (CRS) self-certifications (adjusted to account for digital assets) be permitted as qualifying substitute forms. A comment supported the use of the type of substitute form described in Notice 2011-71, 2011 I.R.B. 233 (August 19, 2011), to establish a payee's status as a foreign person for section 6050W reporting purposes.

The Treasury Department and the IRS agree that a broker's ability to leverage a certification form already in use for other purposes may reduce compliance burdens associated with documenting customers. As stated in the preceding paragraph, however, the proposed regulations already permitted brokers to rely on substitute certification forms that meet the standard that applies for purposes of section 1441 of the Code. Under this standard, a substitute form must include information substantially similar to that required on an official certification form and the certifications relevant to the transactions associated with the form. This standard is similar to the standard for the substitute form specified in Notice 2011-71 (in reference to the comment to use that substitute form). Additionally, as the comments referencing the use of self-certifications pertaining to foreign

reporting regimes presumably were made with respect to their use by non-U.S. brokers, and as the requirements for non-U.S. brokers are reserved, these comments are not further considered for the final regulations. See Part I.G.2. of this *Summary of Comments and Explanation of Revisions*. As under the proposed regulations, the final regulations provide that a U.S. digital asset broker may rely on a substitute Form W-8 that meets the standard for purposes of section 1441 to establish a customer's foreign status.

H. Definitions and Other Comments

The proposed regulations defined a hosted wallet as a custodial service provided to a user that electronically stores the private keys to digital assets held on behalf of others and an unhosted wallet as a non-custodial means of storing, electronically or otherwise, a user's private keys to digital assets held by or for the user. Included in the definition of unhosted wallets was a statement that unhosted wallets can be provided through software that is connected to the internet (a hot wallet) or through hardware or physical media that is disconnected from the internet (a cold wallet). Several comments noted that these definitions were confusing because the proposed regulations failed to define a wallet more generally. The final regulations adopt this comment and define a wallet as a means of storing, electronically or otherwise, a user's private keys to digital assets held by or for the user. Final § 1.6045-1(a)(25)(i).

The proposed regulations also provided that "a digital asset is considered held in a wallet or account if the wallet, whether hosted or unhosted, or account stores the private keys necessary to transfer access to, or control of, the digital asset." Several comments expressed confusion with this definition. One comment suggested that this definition was not consistent with how distributed ledgers work because digital assets themselves are not held in wallets but rather exist on the blockchain. The Treasury Department and the IRS recognize that digital assets are not actually stored in wallets. Indeed, the preamble to the proposed regulations explained that references to an owner "holding" digital assets generally or "holding" digital assets in a wallet or account were meant to refer to holding or controlling, whether directly or indirectly through a custodian, the keys to the digital assets. To address the comment, however, the final regulations conform the definition in the text to the preamble's

explanation. Accordingly, under the final § 1.6045-1(a)(25)(iv), “[a] digital asset is referred to in this section as held in a wallet or account if the wallet, whether hosted or unhosted, or account stores the private keys necessary to transfer control of the digital asset.” Additionally, the final definition provides that a digital asset associated with a digital asset address that is generated by a wallet, and a digital asset associated with a sub-ledger account of a hosted wallet, are similarly referred to as held in a wallet. The same concept applies to references to “held at a broker,” “held by the user of a wallet,” “acquired in a wallet or account,” or “transferred into a wallet or account.” Holding, acquiring, or transferring, in these cases, refer to holding, acquiring, or transferring the ability to control, whether directly or indirectly through a custodian, the keys to the digital assets.

Another comment suggested references to “wallet or account” in this definition and elsewhere in the proposed regulations failed to recognize the difference between those terms in the digital asset industry. The final regulations do not adopt this comment. Although many terms in the digital asset industry may have their own unique meaning, the terms wallet and account, in these final regulations, are used synonymously.

Another comment indicated that there were several additional unclear definitions, including “software”, “platform”, and “ledger.” The regulations do not adopt this comment. Standard rules of construction apply to give undefined terms, such as software, ledger, and platform, their usual meaning. These terms are sufficiently basic to not warrant additional definitions.

I. Comments Based on Constitutional Concerns

1. First Amendment

Multiple comments alleged that the proposed regulations, if finalized, would violate the First Amendment to the U.S. Constitution on a variety of asserted bases. Some comments viewed the proposed regulations as requiring developers to include code in their products that would reveal customer data, while others asserted that the proposed regulations would require persons who fit the definition of broker to write their software in a manner that goes directly against their closely held political, moral, and social beliefs. Comments also said the proposed regulations would infringe on a taxpayer’s freedom of association under the First Amendment because the IRS

could use the taxpayer identification information and wallet data reported by brokers to monitor their financial associations.

The Department of the Treasury and the IRS do not agree that the regulations as proposed or as finalized infringe upon rights guaranteed by the First Amendment. The First Amendment provides, among other things, that “Congress shall make no law . . . abridging the freedom of speech.” U.S. CONST. Amend. I. Protected speech includes the right to utter, print, distribute, receive, read, inquire about, contemplate, and teach ideas. *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965). It also includes the right to freely associate with others for expressive purposes. *Freeman v. City of Santa Ana*, 68 F.9d 1180, 1188 (9th Cir. 1995). Protected speech includes conduct designed to express and convey ideas. *New Orleans S.S. Ass’n v. General Longshore Workers*, 626 F.2d 455, 462 (5th Cir. 1980), aff’d. *Jacksonville Bulk Terminals, Inc. v. International Longshoremen’s Ass’n*, 457 U.S. 702 (1982). The rights protected by the First Amendment include both the right to speak freely and the right to refrain from speaking at all. *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). A First Amendment protection against compelled speech, however, has been found only in the context of governmental compulsion to disseminate a particular political or ideological message. See, e.g., *Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241 (1974) (holding unconstitutional a state statute requiring newspapers to publish the replies of political candidates whom they had criticized); *Wooley v. Maynard*, 430 U.S. 705 (1977) (holding that a state may not require a citizen to display the state motto on his license plate). Challenges to government-compelled disclosures that are based on the freedom of association are determined on an “exacting scrutiny” standard, which requires a “substantial relation between the disclosure requirement and a sufficiently important governmental interest.” *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021) (quoting *Doe v. Reed*, 561 U.S. 186, 196 (2010) (internal quotation marks omitted)).

The final regulations do not compel political or ideological speech. Although they do require disclosure of certain information, they do not infringe on a taxpayer’s right to free association. Instead, the final regulations merely require information reporting for tax compliance purposes, a sufficiently important governmental interest. See

Collett v. United States, 781 F.2d 53, 55 (6th Cir. 1985) (rejecting a taxpayer’s First Amendment challenge to the imposition of a frivolous return penalty under section 6702 and holding that “the maintenance and viability of the tax system is a sufficiently important governmental interest to justify incidental regulation upon speech and non-speech communication”) (citing *United States v. Lee*, 455 U.S. 252, 260 (1982)). The information required from brokers with respect to digital asset sales is similar to the information required to be reported by brokers with respect to other transactions required to be reported, and the IRS has an important interest in receiving this information. The IRS gathers third-party information about income received and taxes withheld to verify self-reported income and tax liability reported on Federal income tax returns. The use of reliable and objective third-party verification of income increases the probability of tax evasion being detected and increases the cost of evasion to the taxpayers, thereby decreasing the overall level of tax evasion by taxpayers. Information reporting also assists taxpayers receiving such reports to prepare their Federal income tax returns and helps the IRS determine whether such returns are correct and complete. Accordingly, the Treasury Department and the IRS have concluded the final regulations would pass muster under First Amendment scrutiny.

2. Fourth Amendment

Multiple comments contended the proposed regulations, if finalized, would violate the Fourth Amendment’s prohibition on warrantless searches and seizures of a person’s papers and effects because they do not currently provide their brokers with their personal information when they transact in digital assets. Comments asserted the proposed regulations would violate the Fourth Amendment because reporting information that would link an individual’s identity to transaction ID numbers and their digital asset addresses would allow the government to see historical and prospective information about the individual’s activities. Although the Treasury Department and the IRS do not agree that requiring the reporting of this information would violate the Fourth Amendment, the final regulations do not require this information to be reported. Instead, the final regulations require this information to be retained by the broker to ensure the IRS will have access to all the records it needs if requested by IRS personnel as part of

an audit or other enforcement or compliance effort.

The Fourth Amendment protects against “unreasonable searches and seizures.” U.S. CONST. Amend IV. The Fourth Amendment’s protections extend only to items or places in which a person has a constitutionally protected reasonable expectation of privacy. *See California v. Ciraolo*, 476 U.S. 207, 211 (1986). Customers of digital asset brokers do not have a reasonable expectation of privacy with respect to the details of digital asset sale transactions effectuated by brokers. *See United States v. Gratkowski*, 964 F.3d 307, 311–12 (5th Cir. 2020) (rejecting the defendant’s Fourth Amendment claim of a reasonable expectation of privacy in transactions recorded in a publicly available blockchain and in the records maintained by the virtual currency exchange documenting those transactions, noting that “the nature of the information and the voluntariness of the exposure weigh heavily against finding a privacy interest.”). *See also, Goldberger & Dublin, P.C.*, 935 F.2d 501, 503 (2nd Cir. 1991) (citing *United States v. Miller*, 425 U.S. 435, 444 (1976); *Cal. Bankers Ass’n v. Shultz*, 416 U.S. 21, 59–60 (1974)) (summarily rejecting a Fourth and Fifth Amendment challenge to information reporting requirements under section 6050I and noting that similar “contentions relative to the Fourth and Fifth Amendments have been rejected consistently in cases under the Bank Secrecy Act by both the Supreme Court and this Court.”) (additional citations omitted). Gains or losses from these sale transactions must be reflected on a Federal income tax return. Customers of digital asset brokers do not have a privacy interest in shielding from the IRS the information that the IRS needs to determine tax compliance. Moreover, these taxable transactions will be reported to the IRS in due course anyway. To the extent the digital asset sale transactions are recorded on public ledgers, those transactions are not private. Just because customers might choose not to exchange identifying information with brokers when engaging in digital assets transactions does not render the underlying transactions private, particularly when the customers choose to engage in such transactions in a public forum, such as a public blockchain. Therefore, the Treasury Department and the IRS have concluded that the final regulations do not violate the Fourth Amendment.

3. Fifth Amendment and Assertions of Vagueness

Some comments stated that the proposed regulations, if finalized, would violate the Fifth Amendment’s prohibition on depriving any person of life, liberty, or property without due process of law. These comments based this assertion on a variety of views, including that the proposed regulations are unconstitutionally vague and impossible to apply in practice, particularly rules relating to customer identification and documentation. Other comments stated the proposed regulations violate the Fifth Amendment due process clause because the definitions of broker, effect, and digital asset middleman are too vague to be applied fairly. Some comments stated the proposed regulations violate the Fifth Amendment’s protections against compelled self-incrimination.

The Due Process Clause of the Fifth Amendment provides that “no person shall . . . be deprived of life, liberty, or property, without due process of law.” This provision has been interpreted to require that statutes, regulations, and agency pronouncements define conduct subject to penalty “with sufficient definiteness that ordinary people can understand what conduct is prohibited.” *See Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Although some comments stated that digital asset users have not routinely exchanged identifying information with their brokers in the past, this does not mean the requirement that brokers obtain customers’ identifying information going forward is vague—much less unconstitutionally so. “The ‘void for vagueness’ doctrine is a procedural due process concept,” *United States v. Professional Air Traffic Controllers Organization*, 678 F.2d 1, 3 (1st Cir. 1982), but “‘[a]bsent a protectible liberty or property interest, the protections of procedural due process do not attach.” *United States v. Schutterle*, 586 F.2d 1201, 1204–05 (8th Cir. 1978). There is no protectible liberty or property interest in the information required to be disclosed under the regulation. In any event, the relevant test is that a “regulation is impermissibly vague under the Due Process Clause of the Fifth Amendment if it ‘fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.’” *United States v. Szabo*, 760 F.3d 997, 1003 (9th Cir. 2014) (quoting *Holder v. Humanitarian Law Project*, 561 U.S. 1, 18 (2010)). The regulation is not

unconstitutionally vague by this measure. To be sure, brokers will have to obtain the identifying information of users they may not have met in person. However, online brokers have successfully navigated this issue in other contexts.

The Fifth Amendment also provides that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.” U.S. CONST. Am. V. The U.S. Supreme Court has held that this right, properly understood, only prevents the Government from “compel[ing] incriminating communications . . . that are ‘testimonial’ in character.” *United States v. Hubbell*, 530 U.S. 27, 34 (2000). The Supreme Court has held that “the fact that incriminating evidence may be the byproduct of obedience to a regulatory requirement, such as filing an income tax return . . . [or] maintaining required records . . . does not clothe such required conduct with the testimonial privilege.” *Hubbell*, 530 U.S. at 35.

Some comments specifically stated that the definitions of broker, effect, and digital asset middleman are unconstitutionally vague. As discussed in Part I.B.1. of this *Summary of Comments and Explanation of Revisions*, the final regulations apply only to digital asset industry participants that hold custody of their customers’ digital assets and the final regulations revise and simplify the definition of a PDAP. The Treasury Department and the IRS continue to study the non-custodial industry and intend to issue separate final regulations describing information reporting rules for non-custodial industry participants. Therefore, any concerns regarding the perceived vagueness of the definitions as they apply to custodial industry participants have been addressed in these final regulations.

4. Privacy and Security Concerns

Comments expressed a variety of concerns related to the privacy and safety implications of requiring brokers to collect financial data and social security numbers. The Treasury Department and the IRS considered the privacy and security implications of the proposed regulations. Section 80603 of the Infrastructure Act made several changes to the broker reporting provisions under section 6045 to clarify the rules regarding how digital asset transactions should be reported by brokers. The purpose behind information reporting under section 6045 is to provide information to assist taxpayers receiving the reports in preparing their Federal income tax

returns and to help the IRS determine whether such returns are correct and complete. The customer's name and TIN are necessary to match information on Federal income tax returns with section 6045 reporting. Although this is personally identifiable information that customers may wish to keep private and secure, the IRS interest in receiving this information outweighs any privacy concerns about requiring brokers to collect and retain this information. The final regulations do not require brokers to report the transaction ID numbers or digital asset addresses. If brokers do not believe their existing security measures are sufficient to keep personally identifiable information and tax information private and secure, they can choose to implement new security measures or choose to contract with third parties with expertise in securing confidential data.

Comments said they were concerned about brokers, especially smaller brokers, being able to securely store customer data and one comment requested that the final regulations include requirements for the IRS to monitor broker compliance with security measures. Other comments requested a reporting exception for small digital asset brokers that would be based on the value of assets traded during a calendar year or a valuation of the broker's business. These comments were not adopted for the final regulations. Traditional brokers, including smaller brokers, have operated online for many years and have implemented their own online security policies and protocols without specific security regulations under section 6045. The final regulations do not include a general *de minimis* threshold that would exempt small brokers from reporting; however, the Treasury Department and the IRS are providing penalty relief under certain circumstances for transactions occurring during calendar year 2025 and brokers can use this time to improve existing security practices or put a security system in place for the first time.

Some comments expressed concerns about numerous third parties, such as multiple brokers, having access to customer data and questioned the ability of brokers to securely transfer customer data to third parties. Comments also included concerns about the IRS's ability to securely store customer data. The final regulations do not require the information reported to be disseminated to third parties, but as with many other information returns, require filing the complete information with the IRS and furnishing a statement to the taxpayer which can include a

truncated TIN rather than the entire TIN. The final regulations also provide a multiple broker rule, which require only one broker to be responsible for obtaining and reporting the financial and identifying information of a person who participated in a digital asset transaction. Furthermore, and as more fully explained in Part I.B.2. of this *Summary of Comments and Explanation of Revisions*, the final regulations require PDAPs to file information returns with respect to a buyer's disposition of digital assets only if the processor already may obtain customer identification information from the buyer to comply with AML obligations pursuant to an agreement or arrangement with the buyer. The Treasury Department and the IRS acknowledge the concerns raised regarding the IRS's ability to securely store customer data and the information reported on digital asset transactions. The information on Forms 1099-DA will be subject to the same security measures as other information reported to the IRS. Generally, tax returns and return information are confidential, as required by section 6103 of the Code. Additionally, the Privacy Act of 1974 (Pub. L. 93-679) affords individuals certain rights with respect to records contained in the IRS's systems of records. One customer asserted that any information collected on the blockchain is public information, not "return information" under section 6103 and is therefore subject to the Freedom of Information Act (FOIA). Although the blockchain itself is public, all information reported on a Form 1099-DA and filed with the IRS becomes protected in the hands of the IRS under section 6103(b)(2) and is not subject to FOIA.

Some comments express concerns about TIN certification and predicted that individuals would be confused when digital asset brokers requested their TINs. Some comments expressed fear that malicious actors who were not brokers would try to trick individuals into providing their personal information. Some comments said that as potential brokers, they were concerned about having customer data and that data being accessed by unauthorized individuals or entities. Concerns about malicious actors tricking customers into providing their personal information through online scams such as phishing attacks, while unfortunate, are not unique to digital asset reporting. Digital asset brokers who have a legitimate need for the TIN and other personal information of customers should provide their

customers with an explanation for their requests to ensure their customers will not be confused or concerned. Additionally, brokers should act responsibly to safely store any information required to be reported on Form 1099-DA, Form 1099-S, Form 1099-B, and Form 1099-K including personal information of customers.

5. Authority for and Timing of Regulations

Multiple comments expressed concerns that the Treasury Department and the IRS lacked authority to promulgate the digital asset broker regulations or asserted that the proposed regulations were published too soon or without sufficient development. For example, some comments said the IRS should wait to regulate digital assets until after consulting with other Federal agencies or that the proposed regulations addressed issues that should first be addressed by Congress or other agencies. Congress enacted the Infrastructure Act in 2021 and section 80603 made several changes to the broker reporting provisions under section 6045 to clarify the rules regarding how certain digital asset transactions should be reported by brokers, and to expand the categories of assets for which basis reporting is required to include all digital assets. Congress's power to lay and collect taxes extends to the requirement that brokers report information on taxable digital asset transactions. The proposed regulations were published on August 29, 2023, and the final regulations are intended to implement the Infrastructure Act; therefore, the IRS is not attempting to regulate digital assets without prior Congressional approval. No inference is intended as to when a sale of a digital asset occurs under any other legal regime, including the Federal securities laws and the Commodities Exchange Act, or to otherwise impact the interpretation or applicability of those or any other laws, which are outside the scope of these final regulations.

Comments said the proposed regulations exceeded the authority granted by Congress. Section 80603 of the Infrastructure Act clarifies how digital assets should be reported by brokers under sections 6045 and 6045A to improve IRS and taxpayer access to gross proceeds and adjusted basis information when taxpayers dispose of digital assets in transactions involving brokers. The Treasury Department and the IRS are issuing these final regulations to implement these statutory provisions. The Treasury Department

and the IRS disagree that these final regulations preempt Congressional action because as discussed in Parts I.A.2. and I.B.1.b. of this *Summary of Comments and Explanation of Revisions*, the final regulations are consistent with statutory language.

Comments said the proposed regulations are hostile and aggressively opposed to digital asset technology and are not technologically neutral. Third-party information reporting addresses numerous types of payments, regardless of whether or not these payments are made online. Section 6045(a) requires brokers to file information returns, regardless of whether or not the brokerage operates online. The Infrastructure Act clarifies and expands the rules regarding how digital assets should be reported by brokers under sections 6045 and 6045A to improve IRS and taxpayer access to gross proceeds and adjusted basis information when taxpayers dispose of digital assets in transactions involving brokers. The final regulations implement the Infrastructure Act and require brokers to file information returns that contain information similar to the existing Form 1099-B. The Infrastructure Act defines a digital asset broadly to mean any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary; therefore, the final regulations that require this additional reporting do not exceed statutory authority.

Other comments raised a variety of policy considerations including that the proposed regulations could negatively impact the growth of the digital asset industry which offers a variety of benefits. Information reporting assists taxpayers receiving such reports to prepare their Federal income tax returns and helps the IRS determine whether such returns are correct and complete. The legislation enacted by Congress confirming that information reporting by digital asset brokers is required represents a judgment that tax administration concerns should prevail over the policy considerations raised by the comments. Furthermore, information reporting from these regulations may result in reduced costs for taxpayers to monitor and track their digital asset portfolios. These reduced costs and the increased confidence potential digital asset owners will gain as a result of brokers being compliant with Federal tax laws may increase the number of digital asset owners and may increase existing owners' digital asset trade volume. Digital asset owners currently must closely monitor and maintain records of all their transactions

to correctly report their tax liability at the end of the year. This is a complicated and time-consuming task that is prone to error. Those potential digital asset owners who have little experience with accounting for digital assets may have been unwilling to enter the market due to the high learning and record maintenance costs. Eliminating these high entry costs will allow more potential digital asset owners to enter the market. In addition, these regulations may ultimately mitigate some compliance costs for brokers by providing clarity, certainty, and consistency on which types of transactions and information are, and are not, subject to reporting.

II. Final §§ 1.1001-7, 1.1012-1(h), and 1.1012-1(j)

A. Comments on the Taxability of Digital Asset-for-Digital Asset Exchanges

A few comments questioned the treatment, under the rules in proposed § 1.1001-7(b)(1) and (b)(1)(iii)(C), of an exchange of one digital asset for another digital asset, differing materially in kind or in extent, as a taxable disposition. Such treatment, a comment advised, would be detrimental to taxpayers, because it would ignore the virtual nature of digital assets and volatile and drastic price swings in this market and the potential adverse tax consequences of having to recognize capital gains immediately but with allowable capital losses being limited in some instances. Another comment stated the proposed treatment would be administratively impractical, because such a rule, the comment argued, rests on the false presumption that an exchange of digital assets is akin to an exchange of stocks/securities and that, unlike those exchanges, taxpayers have opportunities to engage in digital asset exchanges in a manner that may go unnoticed by the IRS, and therefore, untaxed. Another comment challenged the proposed treatment, because digital assets, the comment opined, are software that do not encompass legal rights within the meaning of *Cottage Savings Association v. Commissioner*, 499 U.S. 554 (1991).

The final regulations do not adopt these comments. The Treasury Department and the IRS have determined that treating an exchange of digital assets for digital assets is a realization event, within the meaning of section 1001(a) and existing precedents. See, e.g., *Cottage Savings Ass'n*, 499 U.S. at 566 (“Under [the Court’s] interpretation of [section] 1001(a), an exchange of property gives rise to a realization event so long as the

exchanged properties are ‘materially different’—that is, so long as they embody legally distinct entitlements”). Moreover, the Treasury Department and the IRS have determined that the treatment is consistent with longstanding legal principles. Nor do the Treasury Department and the IRS agree with the comment’s assessment that digital assets are only software that do not represent legally distinct entitlements. Accordingly, final § 1.1001-7(b)(1) and (b)(1)(iii)(C) retain the rules in proposed § 1.1001-7(b)(1) and (b)(1)(iii)(C) treating such an exchange as a realization event.

Alternatively, one comment criticized treating an exchange of digital assets for digital assets, differing materially either in kind or in extent, as a taxable disposition, without also providing guidance defining the factors necessary for determining what are material differences. The absence of such guidance, the comment believed, would require taxpayers and brokers to rely on decades-old case law to make such determinations and would result in discrepancies in information reporting for the same types of transactions. Accordingly, the comment recommended the final rules include guidance on these factors. The final regulations do not adopt this recommendation. The Treasury Department and the IRS have concluded that a determination of whether property is materially different in kind or in extent is a factual one, and, thus, beyond the scope of these regulations.

B. Digital Asset Transaction Costs

Proposed § 1.1001-7(b)(2)(i) defined the term *digital asset transaction costs* as the amount in cash, or property (including digital assets), to effect the disposition or acquisition of a digital asset and includes transaction fees, transfer taxes, and any other commissions. By cross-reference to proposed § 1.1001-7(b)(2)(i), proposed § 1.1012-1(h)(2)(i) adopted the same meaning for this term.

Proposed § 1.1001-7(b)(2)(ii) provided rules for allocating digital asset transaction costs to the disposition or acquisition of a digital asset. Proposed § 1.1001-7(b)(2)(ii)(A) set forth the general rule for allocating digital asset transaction costs for purposes of determining the amount realized. Proposed § 1.1001-7(b)(2)(ii)(B) included a special rule, in the case of digital assets received in exchange for other digital assets that differ materially in kind or in extent, allocating one-half of the total digital asset transaction costs paid by the taxpayer to the disposition of the transferred digital asset for

purposes of determining the amount realized.

Proposed § 1.1012-1(h)(2)(ii) provided rules for allocating digital asset transaction costs to acquired digital assets. Proposed § 1.1012-1(h)(2)(ii)(A) included a general rule requiring such costs to be allocated to the basis of the digital assets received. As a corollary to proposed § 1.1001-7(b)(2)(ii)(B), proposed § 1.1012-1(h)(2)(ii)(B) included a special rule in the case of digital assets received in exchange for other digital assets that differ materially in kind or extent, allocating one-half of the total digital asset transaction costs paid by the taxpayer to the acquisition of the received digital assets for purposes of determining the basis of those received digital assets.

1. Proposed Split Digital Asset Transaction Cost Rule

The Treasury Department and the IRS solicited comments on whether the proposed split digital asset transaction cost rule, as described in proposed §§ 1.1001-7(b)(2)(ii)(B) and 1.1012-1(h)(2)(ii)(B), would be administrable. The responses to this inquiry varied widely. One comment viewed the split digital asset transaction cost rule as administrable but only if the digital assets used to pay the digital asset transaction costs can be reasonably valued and recognized at their acquisition cost. The final regulations do not adopt this comment. The determination of whether digital assets can be reasonably valued could be made differently by different brokers and give rise to inconsistent reporting. The sale or disposition of digital assets giving rise to digital asset transaction costs is subject to the rules of final §§ 1.1001-7 and 1.1012-1(h), which provide consistent rules for all digital asset-for-digital asset transactions.

Another comment opined that the proposed split digital asset transaction cost rule would be administrable, but that its application would pose an increased risk of error and would not reflect current industry practice. In contrast, several comments expressed the view that the proposed split digital asset transaction cost rule, in fact, would not be administrable. These comments cited a variety of reasons, including that the rule's application would be too burdensome, complicated, or confusing for brokers and taxpayers and would render oversimplified allocations not reflective of the diverse and complex nature of digital asset transactions. Other comments opined that the lack of administrability would derive, in part, from the disparity of

having a different allocation rule for exchanged digital assets than the allocation rules applied to other asset classes, which, in their view, would result in disparate tax treatment for the latter type of costs. A few comments advised that the administrability issues would be caused in part, from the difficulties the rule would create when later seeking to reconcile transaction accounting and transaction validation. One comment shared the view that the proposed rule would be difficult for decentralized digital asset trading platforms to administer because it would require coordination of multiple parties providing facilitative services, and no such coordination currently exists in the form of technological infrastructure and standardized processes for tracking and communicating cost-basis information across these platforms.

Several comments noted that digital asset transaction costs paid for effecting an exchange of digital assets were generally low, with one comment opining that such costs were generally less than 1 percent of a transaction's total value. These comments often noted that the resulting allocations from applying the proposed split digital asset transaction cost rule would result in no or minimal timing differences in the associated income. Other comments questioned whether the benefits derived from having taxpayers and brokers apply the proposed split digital asset transaction cost rule would be commensurate with the additional administrative burdens that would be placed on the parties. A few comments shared the concern that the proposed split digital asset transaction cost rule would impose additional burdens and complexity, because such a rule would require brokers to implement or modify their existing accounting systems, develop new software, and retain additional professional service providers in order to comply. One comment also noted the resulting allocations from the proposed split digital asset transaction cost rule would be inconsistent with the allocations required by Generally Accepted Accounting Principles and would produce unnecessary book-tax differences. Some comments expressed the concern that the proposed split digital asset transaction cost rule would produce arbitrary approximations not necessarily reflecting the economic reality of the particular transactions. Additionally, one comment stated that the proposed split digital asset transaction cost rule would pose litigation risks for the IRS because such

a rule would override the parties' contracted cost allocations and thus impede their rights under contract law. Another comment argued that the proposed split digital asset transaction cost rule would impede the right of taxpayers and brokers to determine which party bears the economic burden of digital asset transaction costs. The Treasury Department and the IRS have concluded that the proposed split digital asset transaction cost rule would be overly burdensome for taxpayers and brokers to administer. Accordingly, the final regulations do not adopt the proposed rule.

2. Recommended Alternatives for the Split Digital Asset Transaction Cost Rule

A few comments recommended the adoption of a rule allocating digital asset transaction costs based on the actual amounts paid for the specific disposition or acquisition, which some viewed as promoting taxpayer equity. One comment also recommended that this rule be coupled with flexibility sufficient to accommodate different types of transactions and technological solutions for ease of administration. Several comments recommended that the final regulations adopt a discretionary rule allowing brokers to decide how to allocate these costs (discretionary allocation rule). Most of these comments also recommended that brokers be required to notify taxpayers of the cost allocations and to apply the allocations in a consistent manner. The cited benefits for this recommendation included that the resulting allocations would be more consistent with the economics of the actual fees charged by brokers, and that the recommended rule would create symmetry with the rules applied to transactions involving other asset classes. In addition to recommending adoption of a discretionary allocation rule, a few comments also recommended the inclusion of safe harbors for brokers. In urging the inclusion of safe harbors, one comment suggested limiting their availability to those brokers who maintain records documenting the actual cost allocations. Of the comments recommending a discretionary allocation rule, most viewed such a rule as comparable with the current rules for allocating transactional costs incurred in transactions with other asset classes. One comment also recommended that the discretionary allocation rule be extended to cover taxpayers' allocations of digital asset transaction costs.

In addition to recommending a discretionary allocation rule, many comments also recommended that the

final rules provide an option, allowing brokers or taxpayers to allocate digital asset transaction costs on a per-transaction basis. This approach, in their view, was necessary because of the diverse types of digital asset transactions. Comments claimed that a “one-size-fits-all” approach would not account for the inevitable variability, and that the recommended approach would promote fairness and administrability. One comment recommended that the final regulations include a *de minimis* rule excluding digital asset transaction costs under a specified threshold. Another comment recommended that the split digital asset transaction cost rule be replaced with rules requiring taxpayers to account for digital asset transaction costs in accordance with the principles of section 263(a) of the Code, while permitting brokers to allocate and report digital asset transaction costs either as a reduction in the amount realized on the disposed digital assets or as an additional amount paid for the acquired digital assets so long as the brokers’ reporting is consistently applied. One comment recommended the inclusion of a simplified reporting rule with less emphasis on precise allocations of digital asset transaction costs for smaller transactions. The comment did not offer parameters for defining smaller transactions in this context. The final regulations do not adopt these recommendations. The Treasury Department and the IRS have determined that the adoption of discretionary allocation rules would place additional administrative burdens on taxpayers, brokers, and the IRS. Such rules would render disparate treatment of such costs among brokers and/or taxpayers with multiple wallet or broker accounts, thus necessitating the need for additional tracking and coordination to avoid discrepancies. In contrast, a uniform rule is less susceptible to manipulation and avoids administrative complexities.

3. Proposed 100 Percent Digital Asset Transaction Cost Rule

The Treasury Department and the IRS also solicited comments on whether a rule requiring a 100 percent allocation of digital asset transaction costs to the disposed-of digital asset in an exchange of one digital asset for a different digital asset (100 percent digital asset transaction cost rule) would be less burdensome.

Several comments agreed that the proposed 100 percent digital asset transaction cost rule would be less burdensome. Other comments, however, did not share this view for a variety of

reasons. Some comments stated that the resulting allocations would not accurately reflect the economic realities of the transactions, although one comment expressed the view that these allocations would more closely reflect economic realities than the allocations resulting from the proposed split digital asset transaction cost rule. One comment cited the rule’s rigidity, which the comment concluded would lead to increased potential disputes between the IRS and taxpayers and expose both parties to additional litigation and administrative burdens. One comment cited the oversimplifying effect the rule would have on diverse and complex digital asset transactions, which would, in the comment’s view, result in inaccurate reporting of gains and losses and other unintended tax consequences, pose a potential disincentive for taxpayers to engage in smaller transactions, and disproportionately impact investors engaged in certain investment strategies. The Treasury Department and the IRS do not agree that the resulting allocations rendered by the 100 percent digital asset transaction cost rule are inconsistent with the economic realities of some digital asset transactions. The 100 percent digital asset transaction cost rule likely creates minor timing differences, but such differences do not outweigh the benefits, in the form of clarity and certainty in determining the allocated costs. Further, the Treasury Department and the IRS have concluded that the 100 percent digital asset transaction cost rule appropriately balances concerns about administrability, compliance burdens, manipulability, and accuracy. Specifically, it alleviates the burdens placed on brokers and taxpayers from having to track the allocated costs separately to ensure the amounts are accurate. Additionally, the 100 percent digital asset transaction cost rule, applied to both unhosted wallets and accounts held in the custody of a broker, is less burdensome than the proposed split digital asset transaction cost rule and the recommended discretionary allocation rule.

One comment cited the current industry consensus to treat an exchange of one digital asset for another digital asset as two separate transactions consisting of: a sale of the disposed digital asset followed by a purchase of the received digital asset. Because of this industry consensus, the comment recommended that these costs be treated as selling expenses reducing the amount realized on the disposed digital assets. The final regulations adopt this

comment. Final § 1.1001–7(b)(2)(ii) sets forth rules for allocating digital asset transaction costs, as defined in final § 1.1001–7(b)(2)(i), by retaining the general rule in proposed § 1.1001–7(b)(2)(ii)(A), and revising proposed § 1.1001–7(b)(2)(ii)(B). Final § 1.1001–7(b)(2)(ii)(A) replaces the split digital asset transaction cost rule with the 100 percent digital asset transaction cost rule. Under final § 1.1001–7(b)(2)(ii)(A), the total digital asset transaction costs, other than in the case of certain cascading digital asset transaction costs described in final § 1.1001–7(b)(2)(ii)(B), are allocable to the disposed digital assets.

Final § 1.1012–1(h)(2)(ii) also includes corresponding rules to those in final § 1.1001–7(b)(2)(ii), for allocating digital asset transaction costs, as defined in final § 1.1012–1(h)(2)(i). Final § 1.1012–1(h)(2)(ii) retains the general rule in proposed § 1.1012–1(h)(2)(ii)(A), and revises the special rule in proposed § 1.1012–1(h)(2)(ii)(B), removing the split digital asset transaction cost rule and allocating digital asset transaction costs paid to effect an exchange of digital assets for other digital assets, differing materially in kind or in extent, exclusively to the disposition of digital assets. Under final § 1.1012–1(h)(2)(ii)(A), digital asset transaction costs, other than those described in final § 1.1012–1(h)(2)(ii)(B) and (C), are allocable to the digital assets received. Under final § 1.1012–1(h)(2)(ii)(B), if digital asset transaction costs are paid to effect the exchange of digital assets for other digital assets, differing materially in kind or in extent, then such costs are allocable exclusively to the disposed digital assets. Final § 1.1012–1(h)(2)(ii) also adds special rules in final § 1.1012–1(h)(2)(ii)(C) for allocating certain cascading digital asset transaction costs, which are discussed in Part II.B.4. of this *Summary of Comments and Explanation of Revisions*. Final § 1.1012–1(h)(2)(ii) also states that any allocations or specific assignments, other than those in accordance with final § 1.1012–1(h)(2)(ii)(A) through (C), are disregarded.

Finally, final § 1.1001–7(b)(2)(ii)(B) adds a new special rule for cascading digital asset transaction costs. See Part II.B.4. of this *Summary of Comments and Explanation of Revisions* for a discussion of the special rule in final § 1.1001–7(b)(2)(ii)(C) for allocating certain cascading digital asset transaction costs and the Treasury Department’s and the IRS’s reasons for adopting that rule.

4. Cascading Digital Asset Transaction Costs

The Treasury Department and the IRS solicited comments on whether cascading digital asset transaction costs, that is, a digital asset transaction cost paid with respect to the use of a digital asset to pay for a digital asset transaction cost, should be treated as digital asset transaction costs associated with the original transaction.

A few comments agreed that cascading digital asset transaction costs should be allocated to the original transaction. Most comments, however, opposed allocating such costs exclusively to the original transaction, citing an array of reasons. A few comments advised that such an approach would improperly aggregate economically distinct transactions and would fail to accurately measure cost basis and any gains or losses on the disposed digital assets used to pay the subsequent digital asset transaction costs. These comments expressed the position that the proposed approach would conflict with existing tax jurisprudence and fail to reflect economic reality. One comment cited the oversimplifying effect of such a rule, which would, in the comment's view, lead to inequitable tax treatment and imposition of undue operational burdens.

A few comments cited the significant operational burdens placed on both taxpayers and brokers to implement such a rule. One of these comments also cited the complicating and potentially inequitable effect such a rule would have on making the allocation and tax calculations. Comments recommended a variety of alternatives for allocating cascading digital asset transaction costs. Some comments recommended that these costs be allocated to each specific transaction giving rise to the costs. In recommending this approach, one comment noted that it would offer a more nuanced and accurate reflection of the financial realities of digital asset transactions, thus ensuring "fairer" tax treatment, "clearer" records, and "easier" audit trails, while also acknowledging that it may impose increased administrative burdens. In addition to making the above recommendation, one comment also offered an alternative approach suggesting that such costs be allocated proportionally based on the significance of each transaction in the cascading chain. This alternative recommendation, the comment noted, would balance the needs for accurate cost reporting and accounting, and would reduce disproportionately high tax burdens

arising from minor transaction costs, while the comment acknowledged that it may be complex to implement. Another comment recommended allocating cascading digital asset transaction costs based on some other factors, such as the complexity or difficulty of each transaction and market conditions. The final regulations do not adopt these comments for allocating cascading digital asset transaction costs. The Treasury Department and the IRS have determined that these costs should be allocated in the same manner provided in the general allocation rules with a limited exception because this framework is less burdensome, produces accurate tax determinations, and reduces the potential for errors and inconsistencies.

A few comments included a description of network fees, exchange fees, one time access fees, and other service charges and recommended that the final rules treat these types of fees as cascading digital asset transaction costs. Final §§ 1.1001–7 and 1.1012–1(h) do not adopt these recommendations. The Treasury Department and the IRS have determined that whether a type of transaction fee fits within the definition of cascading digital asset transaction costs is a factual determination and is beyond the scope of these regulations.

Final § 1.1001–7(b)(2)(ii)(B) adopts a modified special rule for allocating certain cascading digital asset transaction costs for an exchange described in final § 1.1001–7(b)(1)(iii)(C) (an exchange of digital assets for other digital assets differing materially in kind or in extent) and for which digital assets acquired in the exchange are withheld from digital assets acquired in the original transaction to pay the digital asset transaction costs to effect the original transaction. For such transactions, the total digital asset transaction costs paid by the taxpayer, to effect the original exchange and any dispositions of the withheld digital assets, are allocable exclusively to the disposition of digital assets from the original exchange. For all other transactions not otherwise described in final § 1.1001–7(b)(2)(ii)(B), digital asset transaction costs are allocable in accordance with the general allocation rule set forth in final § 1.1001–7(b)(2)(ii)(A), that is, digital asset transaction costs are allocable to the specific transaction from which they arise.

Final § 1.1012–1(h)(2)(ii) adds corresponding special allocation rules for certain cascading digital asset transaction costs paid to effect an exchange of one digital asset for another digital asset and for which digital assets

are withheld from those received in the exchange to pay the digital asset transaction costs to effect such an exchange. For such transactions, the total digital asset transaction costs paid by the taxpayer to effect the exchange and any dispositions of the withheld digital assets are allocable exclusively to the digital assets disposed of in the original exchange.

C. Basis

Final § 1.1012–1(j) clarifies the scope of the lot identification rules for *digital assets* defined by cross-reference to § 1.6045–1(a)(19), except for digital assets the sale of which is not reported by a broker as the sale of a digital asset because the sale is a sale of a dual classification asset described in Part I.A.4.a. of this *Summary of Comments and Explanation of Revisions* that is cleared or settled on a limited-access regulated network subject to the coordination rule in final § 1.6045–1(c)(8)(iii), a disposition of contracts covered by section 1256(b) subject to the coordination rule in final § 1.6045–1(c)(8)(ii), or is a sale of a dual classification asset that is an interest in a money market fund subject to the coordination rule in final § 1.6045–1(c)(8)(iv). Final § 1.1012–1(j)(3) applies to digital assets held in the custody of a broker, whereas the final rules in § 1.1012–1(j)(1) and (2) apply to digital assets not held in the custody of a broker. Final § 1.1012–1(j) also defines the terms *wallet*, *hosted wallet*, *unhosted wallet*, and *held in a wallet* by cross-reference to the definitions for these terms in § 1.6045–1(a)(25)(i) through (iv).

1. Digital Assets Not Held in the Custody of a Broker

For units not held in the custody of a broker, such as in an unhosted wallet, proposed § 1.1012–1(j)(1) provided that if a taxpayer sells, disposes of, or transfers less than all the units of the same digital asset held within a single wallet or account, the units disposed of for purposes of determining basis and holding period are determined by a specific identification of the units of the particular digital asset in the wallet or account that the taxpayer intends to sell, dispose of, or transfer. Under the proposed regulations, for a taxpayer that does not specifically identify the units to be sold, disposed of, or transferred, the units in the wallet or account disposed of are determined in order of time from the earliest purchase date of the units of that same digital asset. For purposes of making this determination, the dates the units were transferred into the taxpayer's wallet or account are

disregarded. Proposed § 1.1012–1(j)(2) provided that a specific identification of the units of a digital asset sold, disposed of, or transferred is made if, no later than the date and time of sale, disposition, or transfer, the taxpayer identifies on its books and records the particular units to be sold, disposed of, or transferred by reference to any identifier, such as purchase date and time or the purchase price for the unit, that is sufficient to identify the basis and holding period of the units sold, disposed of, or transferred. A specific identification could be made only if adequate records are maintained for all units of a specific digital asset held in a single wallet or account to establish that a unit is removed from the wallet or account for purposes of subsequent transactions.

a. Methods and Functionalities of Unhosted Wallets

The Treasury Department and the IRS solicited comments on whether there are methods or functionalities that unhosted wallets can provide to assist taxpayers with the tracking of a digital asset upon the transfer of some or all units between custodial brokers and unhosted wallets. In response, one comment stated that unhosted wallets currently lack the functionalities to allow taxpayers to make specific identifications, as provided in proposed § 1.1012–1(j)(2), of their basis and holding periods by the date and time of a sale, disposition, or transfer from an unhosted wallet even if taxpayers were to employ transaction-aggregation tools. In contrast, another comment advised that existing transaction-aggregation tools could provide the needed assistance for tracking digital assets held in unhosted wallets. The remaining comments suggested that no methods or functionalities are currently available or feasible that would allow unhosted wallets to track purchase dates, times, and/or the basis of specific units. Noting that unhosted wallets are open-source software created by developers with limited resources, one comment opined that any expectation that such functionalities can be added to these wallets before 2030 would be unreasonable. Creating such functionalities, some comments also stated, would require the adoption of universal industry-wide standards or methods for reliably tracking cost basis information across wallets and transactions, yet existing technology challenges and the complexity of some transactions would serve as impediments to their adoption. These comments also stated that the addition of comprehensive cost-basis tracking to

unhosted wallets would make such wallets prohibitively risky for taxpayers, thus depriving them of their privacy, security, and control benefits.

The Treasury Department and the IRS have determined that the final ordering rules for digital assets not held in the custody of a broker should strike a balance between the compliance burdens placed on taxpayers and the necessity for rules that will comply with the statutory requirements of section 1012(c)(1) to render accurate tax results. Accordingly, notwithstanding existing technology limitations, final § 1.1012–1(j)(2) provides that specific identification of the units of a digital asset sold, disposed of, or transferred is made if, no later than the date and time of the sale, disposition, or transfer, the taxpayer identifies on its books and records the particular units to be sold, disposed of, or transferred by reference to any identifier, such as purchase date and time or the purchase price for the unit, that is sufficient to identify the units sold, disposed of, or transferred in order to determine the basis and holding period of such units. Taxpayers can comply with these rules by keeping books and records separate from the data in the unhosted wallet. A specific identification can be made only if adequate records are maintained for the unit of a specific digital asset not held in the custody of a broker to establish that a unit sold, disposed of, or transferred is removed from the wallet. Taxpayers that wish to simplify their record maintenance tasks may adopt a standing rule in their books and records that specifically identifies a unit selected by an unhosted wallet for sale, disposition or transfer as the unit sold, disposed of or transferred, if that would be sufficient to establish which unit is removed from the wallet.

b. Ordering Rule for Digital Assets Not Held in the Custody of a Broker

The Treasury Department and the IRS also solicited comments on whether the ordering rules of proposed § 1.1012–1(j)(1) and (2) for digital assets not held in the custody of a broker should be applied on a wallet-by-wallet basis, as proposed, on a digital asset address-by-digital asset address basis, or on some other basis. The Treasury Department and the IRS received a variety of responses to this inquiry.

A few comments recommended the adoption of a universal or multi-wallet rule for all digital assets held in unhosted wallets, with one such comment opining that there is not a strong policy reason for prohibiting this approach. The final regulations do not adopt this recommendation because a

wallet-by-wallet approach is more consistent with the statutory requirements in section 1012(c)(1), which requires that regulations prescribe an account-by-account approach for determining the basis of specified securities that are sold, exchanged, or otherwise disposed of.

One comment recommended that proposed § 1.1012–1(j)(1) be modified to require taxpayers to determine the basis of identical digital assets by averaging the acquisition cost of each identical digital asset if it is acquired at separate times during the same calendar day in executing a single trade order and the executing broker provides a single confirmation that reports an aggregate total cost or an average cost per share. The comment also suggested that taxpayers be provided an option to override the mandatory rule and determine their basis by the actual cost on a per-unit basis if the taxpayer notifies the broker in writing of this intent by the earlier of: the date of the sale of any of such digital assets for which the taxpayer received the confirmation or one year after the date of the confirmation (with the receiving broker having the option to extend the one-year notification period, so long as the extended period would end no later than the date of sale of any of the digital assets). The comment noted a similar rule exists for certain stock acquisitions, citing § 1.1012–1(c)(1)(ii). This comment is not adopted. A key feature of the rules provided in § 1.1012–1(c)(1)(ii) is the confirmation required by U.S. securities laws to be sent from a security broker to the customer shortly after the settlement of a securities trade, which may report the use of average basis for a single trade order that is executed in multiple tranches. Digital asset industry participants do not necessarily issue equivalent confirmations for digital asset purchases. As a result, a customer would not know whether the broker used average basis until the customer received an information return from the broker, even though the customer may need to know whether the broker used average basis sooner, such as when the customer decides which units to dispose of in a transaction.

One comment recommended that the final rules adopt an address-based rule for all digital assets held in unhosted wallets, viewing this approach as posing less of a compliance burden on taxpayers. The statutory requirements of section 1012(c)(1) require that in the case of the sale, exchange, or other disposition of a specified security on or after the applicable date for that security, the conventions prescribed by the regulations must be applied on an

account-by-account basis. Accordingly, the final regulations do not adopt this recommendation.

A few comments expressed general concerns about applying the proposed ordering rules to digital assets held in unhosted wallets, with one comment stating that the rules (1) would not align with how taxpayers currently use unhosted wallets; (2) would require complex tracing, making accurate basis reporting infeasible and unnecessarily complex; and (3) would drive digital asset transactions to offshore exchanges, recommending instead that the ordering rules be applied on a per-transaction basis. Another comment recommended a uniform wallet-based rule for all digital assets held in unhosted wallets. In contrast, a few comments viewed such a rule as imposing administrative difficulties because of technological differences in how different blockchains record and track units, explaining that current blockchains employ one of two types of technology for this purpose: the unspent transaction output (UTXO) model and the account model. The UTXO model, comments described, is similar to a collection of transaction receipts or gift cards with the inputs to a transaction being marked as spent and any outputs remaining under the control of the wallet after a transaction's execution as "unspent outputs" or "UTXOs." In contrast, comments described the account model as aggregating the taxpayer's unspent units into a cumulative balance. A relevant difference between the two models, these comments noted, is that units recorded/tracked by a UTXO model are not divisible, whereas those recorded/tracked by an account model are divisible.

In light of these differences, a comment recommended that the final rules include separate ordering rules based on the type of model used to record the particular units. This comment recommended that units of a digital asset recorded/tracked with the UTXO model should be identified by taxpayers using the specific identification rule and applied on a wallet-by-wallet basis, defining wallet for this purpose as a collection of logically related digital asset addresses for which the wallet may form transactions involving more than a single address. This comment also recommended that units recorded by the account model should be identified by taxpayers using the FIFO ordering rule and applied on a digital asset address-by-digital asset address basis. The final regulations do not adopt these recommendations. As explained later in this preamble, the final rules adopt

uniform basis identification rules not tied to a specific technology. The Treasury Department and the IRS have concluded that the use of different rules based on existing recording models would limit the rules' utility and render disparate timing results of the associated gains or losses. The final rules offer flexibility to accommodate evolving recording models. Moreover, as discussed earlier in this preamble, the recommended address-based rule for units recorded by the account model would not conform to the statutory requirements of section 1012(c)(1).

One comment assessed the benefits and drawbacks of both the wallet-based rule and the address-based rule. This comment viewed the wallet-based rule as offering taxpayer simplicity and audit efficiency but posing added complexity and audit burdens in some instances, and the address-based rule as providing more granular tracking results, more accurately reflecting a taxpayer's intentions for a particular transaction but adding additional administrative burdens and increasing the risk of reporting errors. This comment recommended that the final rules adopt a discretionary rule allowing a taxpayer to choose either rule based on the taxpayer's circumstances. The final regulations do not adopt this recommendation because the Treasury Department and the IRS have determined that such a rule would increase the possibility of manipulation and errors in taxpayers' calculations.

One comment rejected both a wallet-based rule and an address-based rule. This comment stated that a wallet-based rule would add complexity and administrative burdens to tracking basis and would pose an increased risk for reporting errors. This comment also stated that an address-based rule would produce excessive granular data, raise privacy concerns, and present technical challenges. Instead, this comment recommended two alternatives, the first of which would be to apply the ordering rules for unhosted wallets by grouping digital asset addresses or wallets, and the second of which would be to allow taxpayers to identify or report only transactions above a minimum balance or transactional volume. The Treasury Department and the IRS have determined that both approaches would create undue administrative burden. Additionally, the Treasury Department and the IRS have determined that the *de minimis* approach would create an unnecessary disparity between the ordering rules for digital assets in unhosted wallets and the ordering rules for digital assets held in the custody of a broker as well as the ordering rules

applicable to other assets. Accordingly, the final regulations do not adopt either of these recommendations.

A few comments expressed concerns that technology limitations would make the proposed specific identification rule unfeasible for all digital assets held in unhosted wallets regardless of the model used by the blockchain to record and track units. Alternatively, a comment recommended, if a uniform ordering rule is desired for UTXO and account models, then the address-based rule should be adopted but with an option allowing taxpayers to identify related digital asset addresses, subject to a burden-of-proof showing of the relatedness. The comment suggested that this alternative would be easy to administer, provide a verifiable audit trail and flexibility, and avoid potential tax reporting discrepancies. The final regulations do not adopt these suggestions. The Treasury Department and the IRS have concluded that the suggested approaches tied to current technology would have limited usefulness since technology can be expected to change in the future. Accordingly, the final regulations adopt a uniform ordering rule for digital assets not held in the custody of a broker because this rule reduces the risk of errors and simplifies taxpayers' gain or loss calculations.

One comment recommended, as an alternative to the proposed ordering rules for digital assets held in unhosted wallets, that taxpayers be required to determine their cost basis of a unit of a digital asset by averaging their costs for all units of the identical digital asset irrespective of their holding periods. This comment suggested that this approach would simplify determination of the basis of individual units because it would eliminate the need to track the acquisition details of each digital asset. This comment noted that certain other countries employ variations of this approach, suggesting, for example, that its adoption would align future information exchanges with other countries under the CARF. The final regulations do not adopt this recommendation because it is inconsistent with sections 1222 and 1223 of the Code, which require taxpayers to determine whether gains or losses with respect to disposed digital assets are long term or short term, within the meaning of section 1222, based on the taxpayer's holding period for the disposed asset as determined under section 1223.

One comment recommended that the proposed ordering rules be revised to adopt the meaning of "substantially similar or related" as the term is used

in IRS Tax Publication 550, *Investment Income and Expenses*. The final regulations do not adopt this recommendation. The Treasury Department and the IRS have determined that this term refers to special rules not covered by these regulations. Accordingly, the term would not serve as a relevant benchmark by which to apply the ordering rules for digital assets held in unhosted wallets.

A comment requested guidance on how taxpayers should comply with the proposed specific identification rules for digital assets held in unhosted wallets when using tracking software that neither provides a way to mark the units sold nor incorporates these sold units into gain and loss calculations. The final regulations do not adopt this comment. The Treasury Department and the IRS have determined that additional guidance on how taxpayers maintain their books and records to meet their substantiation obligations is not needed and is beyond the scope of this project. The specific identification rules should not apply differently simply because currently available basis tracking software may not have the ability to mark specific units as sold or otherwise track basis in a manner consistent with the specific identification rules.

The Treasury Department and the IRS have determined that the final regulations should include a uniform wallet-based ordering rule for all digital assets held in unhosted wallets rather than separate rules based on existing technological differences. The Treasury Department and the IRS have determined that such a rule best facilitates accurate tax determinations. Moreover, such a rule satisfies the statutory requirements of section 1012(c)(1), which requires that the conventions prescribed by regulations be applied on an account-by-account basis in the case of a sale, exchange, or other disposition of a specified security, on or after the applicable date as defined in section 6045(g). Additionally, to conform with this decision, final § 1.1012-1(j)(1) and (2) retain the term *held in a wallet* as defined in final § 1.6045-1(a)(25), but no longer incorporate the term “account” to avoid confusion with industry usage of the term to refer to the account-based models used by blockchains to record and track units of a digital asset. The Treasury Department and the IRS have determined that the term *wallet*, as defined by § 1.6045-1(a)(25), is sufficiently broad to incorporate both wallets and accounts and the removal of the latter term avoids confusion.

Finally, as discussed in Part VII. of this *Summary of Comments and Explanation of Revisions*, the final regulations under § 1.6045-1 are applicable beginning January 1, 2025. Accordingly, digital assets constitute specified securities and are subject to these requirements beginning January 1, 2025.

2. Digital Assets Held in the Custody of Brokers

For taxpayers that leave their digital assets in the custody of a broker, unless the taxpayer provides the broker with an adequate identification of the units sold, disposed of, or transferred, proposed § 1.1012-1(j)(3)(i) provided that the units disposed of for purposes of determining the basis and holding period of such units is determined in order of time from the earliest units of that same digital asset acquired in the taxpayer's account with the broker. Because brokers do not have the purchase date information about units purchased outside the broker's custody and transferred into the taxpayer's account, proposed § 1.6045-1 instead required brokers to treat units of a particular digital asset that are transferred into the taxpayer's account as purchased as of the date and time of the transfer (rather than as of the date actually acquired as proposed § 1.1012-1(j)(3)(i) requires taxpayers to do). The rule for units that are transferred into the custody of a broker, the comments received in response to this rule, and the final decisions made after considering those comments are discussed in Part I.E.3.b. of this *Summary of Comments and Explanation of Revisions*. See also, final §§ 1.1012-1(j)(3)(i) and 1.6045-1(d)(2)(ii)(B). Additionally, see Part I.E.3.b. of this *Summary of Comments and Explanation of Revisions*, for a discussion of final § 1.1012-1(j)(3)(ii) for how and when a taxpayer can make an adequate identification of the units sold, disposed of, or transferred when the taxpayer leaves multiple units of a type of digital asset in the custody of a broker.

3. Transitional Guidance

The IRS published Virtual Currency FAQs⁵ explaining how longstanding Federal tax principles apply to virtual currency held by taxpayers as capital assets. For example, FAQs 39–40 explain that a taxpayer may specifically

identify the units of virtual currency deemed to be sold, exchanged, or otherwise disposed of either by referencing any identifier, such as the private key, public key, or by records showing the transaction information for units of virtual currency held in a single account, wallet, or address. The information required by these FAQs include: (1) the date and time each unit was acquired; (2) the taxpayer's basis and the fair market value of each unit at the time acquired; (3) the date and time each unit was sold, exchanged, or otherwise disposed of; and (4) the fair market value of each unit when sold, exchanged, or disposed of, and the amount of money or the value of property received for each unit. FAQ 41 further explains that if a taxpayer does not identify specific units of virtual currency, the units are deemed to have been sold, exchanged, or otherwise disposed of in chronological order beginning with the earliest unit of the virtual currency a taxpayer purchased or acquired, that is, on a FIFO basis.

Comments expressed concern that the proposed basis identification rules of proposed § 1.1012-1(j) would apply differently from those in FAQs 39–41. Comments also noted that many taxpayers have interpreted FAQs 39–41 as permitting, or at least not prohibiting, taxpayers from specifically identifying units or applying the FIFO rule on a “universal or multi-wallet” basis. The comments generally described this approach as one in which a taxpayer holds units of a digital asset in a combination of unhosted wallets or exchange accounts and sells, disposes of, or transfers units from one wallet or account, but either specifically identifies units or applies the FIFO rule to effectively treat the units sold, disposed of, or transferred as coming from a different wallet or account. For example, assume D holds 50 units of digital asset GH in D's unhosted wallet, each of which was acquired on March 1, Year 1, and has a basis of \$5. D also acquires 50 units of digital asset GH through Exchange FYZ, each of which was acquired on July 1, Year 1, and has a basis of \$1. Using the universal or multi-wallet approach, D directs Exchange FYZ on December 1, Year 1, to sell 20 units of digital asset GH on D's behalf but specifically identifies the 20 units sold as 20 units coming from D's unhosted wallet for purposes of determining the basis. As a result of the sale, D holds 30 units of GH with Exchange FYZ and 50 units of GH in D's unhosted wallet. Of those 80 units, D treats 30 units as having a basis of \$1 and 50 units as having a basis of \$5,

⁵ The IRS first published the Virtual Currency FAQs on October 9, 2019. Since that time, the FAQs have been revised and renumbered. References to FAQ numbers in this preamble are to the numbering in the version of the FAQs as of June 6, 2024.

without regard to whether the units were purchased through Exchange FYZ or in D's unhosted wallet. Whatever the merits of the comments' points, regulations implementing section 1012(c)(1) are required to adopt an account-by-account method for determining basis and the universal or multi-wallet approach does not conform with the statutory requirements. See Part II.C.1.b. of this *Summary of Comments and Explanation of Revisions*.

These comments also expressed concerns that taxpayers, who seek to transition either prospectively or retroactively from the "universal or multi-wallet" approach to the proposed basis identification rules would experience, perhaps unknowingly, ongoing discrepancies. Some of the discrepancies, in their view, may be exacerbated by the limitations of current basis-tracking software. A comment also noted that taxpayers often have multiple numbers of different tokens and multiple numbers of different blockchains, both of which further enhance the significant complexity of basis tracking. These complexities, in the comment's view, make it impractical for taxpayers to specifically identify digital assets as provided in proposed § 1.1012-1(j)(1) or to apply the default identification rule in proposed § 1.1012-1(j)(2).

A comment requested that taxpayers who previously made basis identifications or applied the FIFO rule on a universal or multi-wallet basis consistently with FAQs 39-41 be exempt from the basis identification rules of proposed § 1.1012-1(j). The final regulations do not adopt the request to exempt previously acquired digital assets from the proposed basis identification rules because such a rule would create significant complexity and confusion if taxpayers used different methods for determining basis for existing and newly acquired digital assets. However, see this Part II.C.3. of this *Summary of Comments and Explanation of Revisions* for a discussion of transitional guidance with respect to these issues.

A few comments requested additional rules and examples, explaining how taxpayers should transition from the universal or multi-wallet approach to specifically identify digital assets as provided in final § 1.1012-1(j)(1) or apply the default identification rule in final § 1.1012-1(j)(2). The Treasury Department and the IRS have determined that any basis adjustments necessary to comply with these final rules is a factual determination. However, to promote taxpayer readiness

to comply with the rules in final § 1.1012-1(j) beginning in 2025, Revenue Procedure 2024-28 is being issued contemporaneously with these final regulations, and will be published in the Internal Revenue Bulletin, to provide transitional relief. The transitional relief will take into account that a transition from the universal approach to the specific identification or default identification rules involves evaluating a taxpayer's remaining digital assets and pool of basis originally calculated under the universal approach and may result, unknowingly, in ongoing discrepancies that could be exacerbated by the limitations of currently available basis tracking software. This relief applies to transactions that occur on or after January 1, 2025. Additionally, the IRS will continue to work closely with taxpayers and other stakeholders to ensure the smooth implementation of final § 1.1012-1(j), including the mitigation of penalties in the early stages of implementation for all but particularly egregious cases. Accordingly, final § 1.1012-1(j) will apply to all acquisitions and dispositions of digital assets on or after January 1, 2025.

D. Comments Requesting Substantive Guidance on Specific Types of Digital Asset Transactions

A few comments requested that the final rules address the tax treatment of specific transactions such as wrapping, burning, liquidity transactions, splitting or combining digital assets into smaller or larger units, and the character and source of revenue-sharing agreements. These regulations provide generally applicable gross proceeds and basis determination rules for digital assets and therefore are not the proper forum to address those issues. Therefore, the final regulations do not adopt these recommendations. See Part I.C.2. of this *Summary of Comments and Explanation of Revisions* for a further discussion of reporting on such transactions.

E. Examples in Proposed § 1.1001-7(b)(5)

A few comments recommended revisions to certain examples included in proposed § 1.1001-7(b)(5). One comment stated that the transaction described in proposed § 1.1001-7(b)(5)(iii) (*Example 3*) is not realistic and should be revised. Final § 1.1001-7(b)(5)(iii) includes a modified example but does not incorporate the comment's recommendation. The Treasury Department and the IRS have determined that the example in final

§ 1.1001-7(b)(5)(iii) illustrates the rules necessary to assist taxpayers in determining amounts realized and that the comment's recommended revisions would limit its usefulness. Another comment recommended that proposed § 1.1001-7(b)(5)(i) (*Example 1*) be revised to address a transaction in which the digital assets are recorded on the blockchain using the UTXO model. The final regulations do not adopt this recommendation. The Treasury Department and the IRS have determined that the recommended revisions are not necessary to highlight the general rules set forth herein.

F. Miscellaneous Comments Relating to Fair Market Value, Amount Realized, and Basis

A comment also recommended that the proposed rules be coordinated with other Federal agencies to harmonize the reporting and tax treatment of digital assets across different jurisdictions and markets and should include a uniform standard for determining the fair market value, amount realized, and basis of digital assets, and should include a requirement that brokers report the same information to the IRS and to the customers on Form 1099-B. Such a rule, the comment believed, could be aligned with the requirements of other Federal agencies, which would simplify valuations and reduce the risk of errors or disputes. The final regulations do not adopt this recommendation. These regulations concern Federal tax laws under the Internal Revenue Code only. No inference is intended with respect to any other legal regime, including the Federal securities laws and the Commodity Exchange Act, which are outside the scope of these regulations.

A comment advised that the proposed rules would produce results that would not reflect economic reality or the preferences of taxpayers, who may already employ different methods and standards for tracking their transactions and calculating their gains and losses. The comment recommended that the final rules adopt rules consistent with existing Federal tax principles and guidance, such as Notice 2014-21, or allow more flexibility and choice for taxpayers to use any reasonable standards consistent with their records and tax reporting. The final regulations do not adopt these recommendations. The Treasury Department and the IRS have determined that providing uniform rules will ease the administrative burdens placed on taxpayers, brokers, and the IRS. A comment expressed concerns that applying the cost allocation rules would require meticulous record-keeping on the part

of taxpayers, which may be challenging for some taxpayers, particularly those engaged in high-frequency trading or small-scale transactions. These issues are also applicable to taxpayers who engage in high-frequency trading of traditional securities. The Treasury Department and the IRS have determined that special rules are not warranted for digital assets.

A few comments suggested that the use of digital assets to pay for transaction costs or certain other services should not be taxable. These comments are not adopted because the Treasury Department and the IRS have determined that treating an exchange of digital assets for services is a realization event, within the meaning of section 1001(a) and existing precedents. See Part II.A. of this *Summary of Comments and Explanation of Revisions* for a further discussion of digital asset dispositions as realization events.

III. Final § 1.6045–4

In addition to reporting on dispositions by real estate buyers of digital assets in exchange for real estate, the proposed regulations required real estate reporting persons to report on digital assets received by sellers of real estate in real estate transactions. One comment questioned the authority behind this change because the Infrastructure Act did not specifically reference reporting of digital asset payments made in real estate transactions. Section 6045(a) provides that a broker must make a return showing “such details regarding gross proceeds and such other information as the Secretary may by forms or regulations require.” Additionally, section 6045(e)(2) provides that “[a]ny person treated as a real estate reporting person . . . shall be treated as a broker.” Accordingly, the statute gives the Secretary explicit authority to require real estate reporting persons to report on digital asset payments made in real estate transactions.

As discussed in Part I.B.4. of this *Summary of Comments and Explanation of Revisions*, one comment raised the concern that in some real estate transactions, direct (peer to peer) payments of digital assets from buyers to sellers may be paid outside of closing and not reflected in the real estate contract for sale. In such transactions, the comment stated that the real estate reporting person would not ordinarily know that the buyer used digital assets to make payment. Instead, the comment suggested that the buyer (or buyer’s representative) would be closer to the details of the transaction and should, therefore, be the reporting party. Section

6045(e) provides authority for just one person to report on the real estate transaction. Accordingly, the final regulations do not make any changes to require a second person to report on the digital asset payment. The Treasury Department and the IRS, however, have determined that it is not appropriate to require reporting by real estate reporting persons on digital asset payments received by the real estate seller when the real estate reporting person does not know, or would not ordinarily know, that digital assets were used by the real estate buyer to make payment. Accordingly, these regulations add final § 1.6045–4(h)(3), which limits the real estate reporting person’s obligation to report on digital asset payments received by the seller of real estate unless the real estate reporting person has actual knowledge, or ordinarily would know, that digital assets were received by the real estate seller. Additionally, the regulations modify Example 10 at final § 1.6045–4(r)(10) to reflect this change. See Part I.B.4. of this *Summary of Comments and Explanation of Revisions*, for a discussion of the application of this same standard for real estate reporting persons reporting on the buyer of real estate under final § 1.6045–1.

Another comment recommended against requiring reporting of digital asset addresses and transaction IDs because that information is not relevant to the seller’s gross proceeds or basis. Although the requirement to report digital asset addresses and transaction IDs was included in the proposed regulations to determine if valuations of digital assets and real estate were done properly, the final regulations have removed the requirement. See Part I.D.1. of this *Summary of Comments and Explanation of Revisions* for a discussion of the rationale behind removing the requirement to report this information under final § 1.6045–1.

One comment raised the concern that reporting on digital assets would be burdensome for real estate reporting persons because real estate transactions are stand-alone transactions and not ongoing account relationships. This comment stated that valuations would be particularly burdensome in installment sale transactions, where the real estate reporting person would need to report the fair market value as of the time of closing of digital assets to be paid later. Instead, this comment recommended that a new check box be added to Form 1099–S to indicate that digital assets were received by the transferor instead of reporting the gross proceeds from the digital asset transfer.

The Treasury Department and the IRS considered these comments. The final regulations do not adopt this suggestion, however, for several reasons. First, the information reporting rules help to reduce the overall income tax gap because they provide information necessary for taxpayers to prepare their Federal income tax returns and reduce the number of inadvertent errors or intentional misstatements shown on those returns. Information reporting also provides information to the IRS that identifies taxpayers who have engaged in these digital asset transactions and may not be reporting their income appropriately. The fair market value of digital assets used to purchase property (including real property) is generally equal to the value of the property. The real estate reporting person has several ways it can ascertain the value of real estate. For example, the agreed upon price of the real estate could be detailed in the contract of sale. To the extent this agreed upon price influences, for example, the commissions due to real estate agents or the taxes due at closing, this amount may already need to be shared with the real estate reporting person. Additionally, depending on the digital assets, the valuation could be relatively easy to determine if, for example, the digital asset is one that tracks the U.S. dollar or is otherwise widely traded. Also, the real estate reporting person could also ask both the buyer and seller whether they had agreed upon the value of the digital assets paid. Finally, if all these avenues to determine the value of digital assets paid are not successful, the regulations permit the real estate reporting person to report the value as undeterminable.

One comment requested that the examples involving closing attorneys that are real estate reporting persons be revised to refer to closing agents instead to reflect the more common and more general term. This comment has been adopted.

Finally, unrelated to transactions involving digital assets, the proposed regulations updated the rules to reflect the section 6045(e)(5) exception from reporting for gross income up to \$250,000 of gain on the sale or exchange of a principal residence if certain conditions are met. As part of this update, proposed § 1.6045–4(b)(1) modified an illustration included in the body of the rule of a transaction that is treated as a sale or exchange even though it may not be currently taxable so that it specifically references this exception (that is, a sale of a principal residence giving rise to gain up to \$250,000 or \$500,000 in the case of married persons filing jointly) to the

reporting rule. One comment questioned whether the example should reflect the actual dollars in the reporting exception rule or if the example should, instead, reference the “prescribed amount” because the actual prescribed amounts could change in the future. The final regulations do not adopt this change because referencing “prescribed amounts” could be confusing, and the amounts referenced are merely included in an example and not in any operative rule.

IV. Final §§ 1.6045A-1 and 1.6045B-1

The proposed regulations did not provide guidance or otherwise implement the changes made by the Infrastructure Act that require transfer statement reporting in the case of digital asset transfers under section 6045A(a) or broker information reporting under section 6045A(d) for digital asset transfers that are not sales or are not transfers to accounts maintained by persons that the transferring broker knows or has reason to know are also brokers. Additionally, it was unclear whether brokers had systems in place to provide transfer statements under section 6045A or whether issuers had procedures in place to report information about certain organizational actions (like stock splits, mergers, or acquisitions) that affect basis under section 6045B for assets that qualify both as digital assets and specified securities under the existing rules. Accordingly, the proposed regulations provided that any specified security of a type that would have been a covered security under section 6045A pursuant to the pre-2024 final regulations under section 6045 (that is, described in § 1.6045-1(a)(14)(i) through (iv) of the pre-2024 final regulations) that is also a digital asset is exempt from transfer statement reporting under section 6045A and similarly proposed to exempt issuers from reporting under section 6045B on any such specified security that is also a digital asset. The proposed regulations also provided penalty relief to transferors and issuers that voluntarily provide these transfer statements and issuer reporting statements.

One comment raised the concern that the decision to delay transfer statements for digital assets under section 6045A will mean that brokers will not receive the important information regarding basis that would be included on those transfer statements. Another comment recommended that the section 6045A rules remain applicable to transfers of securities that are also digital assets.

The Treasury Department and the IRS have determined that specified

securities that are digital assets should generally be exempt from the section 6045A transfer reporting requirements because it is unclear at this point how digital asset brokers would be able to provide the necessary information to make basis reporting work efficiently for digital assets that are broadly tradeable. While brokers may more readily be able to provide transfer statements for tokenized securities, the transfer of such assets on a distributed ledger may not necessarily accommodate the provision of transfer statements. Brokers who wish voluntarily to provide transfer statements for digital assets may do so and will not be subject to penalties for failure to furnish the information correctly under section 6722. Accordingly, the final regulations do not make any broadly applicable changes to the regulations under section 6045A in response to these comments. The final regulations do, however, revise the language in proposed § 1.6045A-1(a)(1)(vi) to limit the transfer statement exemption only to those specified securities, the sale of which would be reportable as a digital asset after the application of the coordination rules in final § 1.6045-1(c)(8). See Part I.A.4.a. of this *Summary of Comments and Explanation of Revisions*, for a discussion of the new coordination rule in final § 1.6045-1(c)(8)(iii) treating sales of dual classification assets that are digital assets solely because the sale of such assets are cleared or settled on a limited-access regulated network as sales of securities or commodities and not sales of digital assets. Additionally, until the Treasury Department and the IRS determine the information that will be required on transfer statements with respect to digital assets, final § 1.6045A-1(a)(1)(vi) limits the penalty relief for voluntarily provided transfer statements to those dual classification assets that are tokenized securities under final § 1.6045-1(c)(8)(i)(D). See Part I.A.4.a. of this *Summary of Comments and Explanation of Revisions*, for a discussion of the new coordination rule in final § 1.6045-1(c)(8)(i)(D) regarding tokenized securities.

One comment agreed with the proposal to exempt issuers from reporting under section 6045B on any specified security that is also a digital asset and recommended delaying the application of section 6045B until after the IRS provides guidance under substantive tax law on which corporate actions affect the basis in specified securities that are digital assets. Another comment recommended against delaying issuer statements under section 6045B because that will hinder the

ability of brokers to make basis adjustments related to covered digital assets. Another comment recommended against exempting issuers from reporting on any security that is also a digital asset because tokenized funds, which are 1940 Act Funds, are already subject to section 6045B reporting, and this reporting provides critical information to institutional investors that are otherwise exempt from Form 1099 reporting if they are corporations.

The Treasury Department and the IRS agree that issuers that are already providing issuer statements should continue to do so. The ability of an issuer of traditional securities to provide information about organizational events should not be affected by whether those securities are sold on a cryptographically secured distributed ledger, because issuers may provide the information by posting it on their website. Accordingly, final § 1.6045B-1(a)(6) provides that an issuer of specified securities that was subject to the issuer statement requirements before the application of these final regulations (legacy specified securities) should continue to be subject to those rules notwithstanding that such specified securities are also digital assets. Additionally, final § 1.6045B-1(a)(6) provides that an issuer of specified securities that are digital assets and not legacy specified securities is permitted, but not required, to file an issuer return under section 6045B. An issuer that chooses to provide this reporting and furnish statements for a specified security under section 6045B will not be subject to penalties under section 6721 or 6722 for failure to report or furnish this information correctly. Finally, the final regulations do not make any changes to address the comment requesting guidance under substantive tax law on which corporate actions affect the basis in specified securities that are digital assets because the comment addresses questions of substantive tax law that are outside the scope of these regulations.

V. Final § 1.6050W-1

Prior to the issuance of the proposed regulations, several digital asset brokers reported sales of digital assets under section 6050W. The proposed regulations did not take a position regarding the appropriateness of treating payments of cash for digital assets, or payments of one digital asset in exchange for a different digital asset as reportable payments under the 2010 final regulations under section 6050W. Instead, to the extent these transactions would be reportable under the proposed section 6045 broker reporting rules, the

proposed regulations added a tie-breaker rule that generally provided that section 6045 (and not section 6050W) would apply to these transactions. Thus, when a payor makes a payment using digital assets as part of a third party network transaction involving the exchange of the payor's digital assets for goods or services and that payment constitutes a sale of digital assets by the payor under the broker reporting rules under section 6045, the amount paid by the payee in settlement of that exchange would be subject to the broker reporting rules (including any exemptions from these rules) and not section 6050W. Additionally, when goods or services provided by a payee are digital assets, and the exchange is a sale of digital assets by the payee under the broker reporting rules under section 6045, the payment to the payee in settlement of that exchange would be reportable under the broker reporting rules (including any exemptions from these rules) and not section 6050W.

As discussed in Part I.B.1. of this *Summary of Comments and Explanation of Revisions*, the final regulations reserve and do not finalize rules on the treatment of decentralized exchanges and certain unhosted digital asset wallet providers as brokers. Because these entities will not be subject to reporting on the sales of digital assets as brokers under final § 1.6045-1, the final regulations have been revised to apply the tie-breaker rule only to payors that are brokers under final § 1.6045-1(a)(1) that effected the sale of such digital assets. Accordingly, the tie-breaker rule will not apply to decentralized exchanges, unhosted digital asset wallet providers, or any other industry participant not subject to these final regulations to the extent they are already subject to reporting under section 6050W.

The proposed regulations also included an example at proposed § 1.6050W-1(c)(5)(ii)(C) (*Example 3*) illustrating the tie-breaker rule in the case of a third party network transaction undertaken by CRX, a third party settlement organization. In the example, CRX effects a payment using an NFT buyer's digital assets that have been deposited with CRX to a participating payee (J) that is a seller of NFTs representing digital artwork. The NFTs that J sells have also been deposited with CRX. Although the payment from buyer to J would have otherwise been reportable under section 6050W because the transaction constitutes the settlement of a reportable payment transaction by CRX, the example concludes that because it is also a sale under proposed § 1.6045-1(a)(9)(ii),

CRX must file an information return under section 6045 and not under section 6050W.

A comment recommended against treating all NFTs as goods and services but instead recommended a case by case determination be made based on the underlying asset or rights referenced by the NFT. To address this comment, the final regulations revise the analysis in § 1.6050W-1(c)(5)(ii)(C) (*Example 3*) of the proposed regulations, redesignated as final § 1.6050W-1(c)(5)(ii)(B) (*Example 2*) in the final regulations, to make it clear that the example applies only to NFTs that represent goods or services such as the NFT in the example, which represents unique digital artwork. The comment also asserted that NFTs representing digital artwork cannot be a good or a service because it cannot be seen, weighed, measured, felt, touched, or otherwise perceived by the senses. The Treasury Department and the IRS have determined that the definition of a good or a service should not be limited in the way suggested by this comment and the final regulations do not do so. One comment requested that the final regulations provide a bright line test or other safe harbor guidance for classifying NFTs that represent more than one asset or right as a good or a service. The final regulations do not adopt this comment because it involves determinations about NFTs that are outside the scope of these regulations. Another comment requested that the final regulations under section 6050W be revised to define goods or services and what it means to guarantee payments, which are components of the definition of a third party payment network transaction subject to reporting under section 6050W. The final regulations do not adopt this comment because it addresses definitions under section 6050W and is thus outside the scope of these regulations.

The proposed regulations also clarified that in the case of a third party settlement organization that has the contractual obligation to make payments to participating payees, a payment in settlement of a reportable payment transaction includes the submission of an instruction to a purchaser to transfer funds directly to the account of the participating payee for purposes of settling the reportable payment transaction. One comment suggested that a settlement organization that provides instructions to a purchaser to transfer funds should not be treated as making or guaranteeing payment. The Treasury Department and the IRS do not agree with this suggestion and no changes are made to this clarification.

Section 6050W(b)(3) provides that a third party settlement organization is a type of payment settlement entity that is a central organization which has the contractual obligation to make payment to participating payees in settlement of third party network transactions. The section 6050W regulations already provided in § 1.6050W-1(a)(2) that a payment settlement entity is making a payment in settlement of a reportable transaction if the payment settlement entity submits the instruction to transfer funds to the account of the participating payee. The final regulations merely clarify these instructions may be made to the purchaser. They do not affect any of the other factors that make a third party a third party settlement organization, such as the existence of an agreement or arrangement that, among other things, guarantees persons providing goods or services pursuant to such agreement or arrangement that such persons will be paid for providing those goods and services, as provided in section 6050W(d)(3)(C).

Another comment recommended that the tie-breaker rule be reversed so that transactions involving digital assets would remain reportable under section 6050W rather than under section 6045 because the information reportable under section 6045 is generally for sales of capital assets, whereas the information reportable under section 6050W is for both sales of property and payments for services. This comment also suggested that, since marketplaces that list unique or collectible NFTs resemble well-known marketplaces for tangible goods which are subject to section 6050W reporting, that these NFT marketplaces should report NFT transactions in the same manner as the established marketplaces. Another comment raised the concern that NFT artists find it difficult to calculate their tax under the existing information reporting rules.

The final regulations do not adopt the comment recommending that the tie-breaker rule be reversed because section 6045 was affirmatively amended by Congress to regulate the information reporting of digital asset transactions. Additionally, as a broad statutory provision, section 6045 is better suited for reporting on NFTs, the uses for which continue to evolve in ways that the use of goods and services traditionally subject to section 6050W reporting do not. Moreover, broadly applicable information reporting rules help to reduce the overall income tax gap because it provides necessary information to taxpayers, as explained by one comment stating that the existing rules are not sufficient for artists to

prepare their Federal income tax returns (and reduce the number of inadvertent errors or intentional misstatements shown on those returns) from NFT transactions. Information reporting also provides information to the IRS that identifies taxpayers who have engaged in these transactions. One comment suggested that a payee statement reflecting the information provided on a Form 1099-K would be easier for taxpayers to reconcile to Federal their income tax return because the transactions are reported in a single aggregate form. The final regulations do not adopt this comment because, as discussed in Part I.D.3. of this *Summary of Comments and Explanation of Revisions*, the final regulations already allow brokers to report sales of specified NFTs under an optional aggregate reporting method. Another comment recommended that reporting by brokers on Form 1099-DA for NFT sales should distinguish between sales by NFT creators or minters (primary sales) and sales by NFT resellers (secondary sales). As discussed in Part I.D.3. of this *Summary of Comments and Explanation of Revisions*, the final regulations adopt this comment by requiring brokers that report under the optional reporting method for specified NFTs to indicate the portion of the aggregate gross proceeds reported that is attributable to the specified NFT creator's or minter's first sale to the extent ordinarily known by the broker.

Finally, a comment requested that guidance be provided regarding the character of the percentage payments made to the original NFT creator or minter after a secondary sale of that same NFT because this determination would impact whether these payments are reportable as a royalty (with a \$10 *de minimis* threshold) or as a payment reportable under section 6045 or some other information reporting provision. Additionally, the character of the payment could impact the source of the payment income for purposes of withholding under chapter 3 of the Code and application of treaty benefits (if applicable). The final regulations do not adopt this comment as it is outside the scope of these regulations.

VI. Final §§ 31.3406(b)(3)–2, 31.3406(g)–1, 31.3406(g)–2, 31.3406(h)–2

Section 3406 and the regulations thereunder require certain payors of reportable payments, including payments of gross proceeds required to be reported by a broker under section 6045, to deduct and withhold a tax on a payment at the statutory backup withholding rate (currently 24 percent) if the payee fails to provide a TIN,

generally on a Form W–9, along with a certification under penalties of perjury that the TIN furnished is correct (certified TIN), or if the payee provides an incorrect TIN. See § 31.3406(b)(3)–2(a) (Reportable barter exchanges and gross proceeds of sales of securities or commodities by brokers). The proposed regulations added digital assets to the title of § 31.3406(b)(3)–2 of the 2002 final regulations but did not make any substantive changes to the rules therein because these rules were considered broad enough to cover digital asset transactions that are reportable under section 6045. Additionally, proposed § 31.3406(g)–2(e) provided that a real estate reporting person must withhold under section 3406 and, pursuant to the rules under § 31.3406(b)(3)–2 of the 2002 final regulations, on a reportable payment made in a real estate transaction with respect to a purchaser that exchanges digital assets for real estate to the extent that the exchange is treated as a sale of digital assets subject to reporting under proposed § 1.6045–1.

A. Digital Assets Sales for Cash

Many comments recommended that the final regulations apply the backup withholding rules only to reportable payments associated with digital assets that are sold for cash. One comment explained that brokers that exchange customers' digital assets for cash are regulated under Federal law as MSBs and under State law as money transmitters. As a result, these brokers already have programs in place to comply with applicable AML and customer identification requirements. This comment suggested that because these brokers already have the infrastructure in place to collect proper tax documentation from customers, they can use their existing systems to deduct and withhold backup withholding taxes on payments of cash made in exchange for digital assets. Other comments requested that the Treasury Department and the IRS provide sufficient time to allow these brokers to contact existing customers to collect certified TINs on Forms W–9. In response to these comments, the Treasury Department and the IRS have concluded that it is appropriate to provide temporary relief on the imposition of backup withholding for these transactions to give brokers the time they need to build and implement backup withholding systems for these types of transactions. See Part VI.D. of this *Summary of Comments and Explanation of Revisions* for a description of the transitional relief that will be provided.

B. Digital Asset Sales for Non-Cash Property

Section 3406 requires payors to deduct and withhold the backup withholding tax on the payment made to the payee. When reportable payments made to the payee are made in property (other than money), § 31.3406(h)–2(b)(2)(i) provides that the payor (broker) must withhold 24 percent of the fair market value of the property determined immediately before or on the date of payment. As with all backup withholding, the payor is liable for the amount required to be withheld regardless of whether the payor withholds from such property. Under the general rule, payors are prohibited from withholding from any alternative source maintained by the payor other than the source with respect to which the payor has a withholding liability. § 31.3406(h)–2(b)(1). Exceptions from this general rule are provided in § 31.3406(h)–2(b)(2) for certain payments made in (non-cash) property. Specifically, under these rules, instead of withholding from the property payment itself, § 31.3406(h)–2(b)(2)(i) provides that a payor may withhold “from the principal amount being deposited with the payor or from another source maintained by the payee with the payor.” The regulation cross-references to an example illustrating methods of withholding permitted for payments constituting prizes, awards, and gambling winnings paid in property other than cash. See § 31.3406(h)–2(b)(2)(i) (cross-reference to § 31.3402(q)–1(d) (*Example 5*) later redesigned as § 31.3402(q)–1(f) (*Example 4*) by TD 9824, 82 FR 44925 (September 27, 2017)). This example illustrates that payors making payments in property may either gross up the overall payment with cash to pay the withholding tax (plus the withholding tax on that grossed-up payment) or have the payee pay the withholding tax to the payor. For a payor that cannot locate an alternative source of cash from which to withhold, § 31.3406(h)–2(b)(2)(ii) permits the payor to defer its obligation to withhold (except for reportable payments made with prizes, awards, or gambling winnings) until the earlier of the date sufficient cash to satisfy the withholding obligation is deposited into the payee's account maintained with the payor or the close of the fourth calendar year after the obligation arose. If no cash becomes available in these other sources by the close of the fourth calendar year after the obligation arose, however, the payor is liable for the backup withholding tax.

Several comments requested that the final regulations clarify how the backup withholding rules apply to sales of digital assets for different digital assets and other non-cash property. One comment requested that the final regulations provide added flexibility to allow brokers to meet their withholding obligations. First, to the extent that these comments assumed that non-cash property proceeds cannot be subdivided, it should be noted that some digital assets do allow for subdivision and, when they do, the payor can satisfy backup withholding obligations by liquidating a portion of those proceeds. Additionally, depending on contractual relationships with their customers, brokers may be permitted to liquidate alternative sources that are comprised of digital assets to satisfy their withholding obligations. Accordingly, brokers effecting sales of digital assets for different digital assets in many cases may have the ability to satisfy their withholding obligations from the digital assets received in the transaction (that is, from the reportable payment) or from an alternative source of digital assets maintained by the payee with the payor.

Another comment asked if brokers are permitted to withhold from digital assets being disposed of instead of the digital assets received in the exchange when market considerations would make that approach less costly. The Treasury Department and the IRS have determined that withholding from disposed-of digital assets is analogous to having the payee pay the withholding tax to the payor as illustrated in the example of permitted withholding methods for prizes, awards, and gambling winnings. § 31.3402(q)–1(f) (*Example 4*). Accordingly, whether a broker can withhold from digital assets being disposed of is a matter for brokers and customers to determine based on the legal or other arrangements between them. No changes are made to the final regulations to address this comment. The Treasury Department and the IRS intend to study the rules under § 31.3406(h)–2(b) further and may issue guidance providing brokers a greater ability to liquidate alternative sources of digital assets to satisfy backup withholding obligations. Additionally, such guidance may address the four-year deferral rule in fact patterns where digital assets are maintained by the payee with the payor.

One comment recommended that the withholding rate be reduced for dispositions of digital assets for different digital assets or other non-cash property. The final regulations do not adopt these suggestions because the

withholding rate is set by statute in section 3406(a)(1). Another comment recommended that the rules permit a delay in the payment of withheld taxes to the later of 180-days or until the end of the calendar year to allow customers to provide their tax documentation. As discussed in Part VI.D. of this *Summary of Comments and Explanation of Revisions*, the final regulations address this comment by delaying the application of the backup withholding rules.

Although a few comments expressed the view that brokers have the ability to administer backup withholding on dispositions of digital assets for certain types of non-cash property, numerous other comments raised concerns with the logistics of withholding on sales of digital assets for different digital assets, particularly when the price of the digital assets received in the exchange (received digital asset) fluctuates between the time of transaction and the time the received digital assets are liquidated into U.S. dollars for deposit with the Treasury Department. These comments noted that, even for received digital assets that do not experience large fluctuations in value, it is not operationally possible for brokers to be certain that they can liquidate 24 percent of the received digital assets at the same valuation price as applies to the underlying transaction giving rise to the withholding obligation.

Accordingly, these comments questioned whether the withholding tax payment would be deficient if the liquidated value of the withheld digital assets falls below the value of 24 percent of the received digital assets at the time of the underlying transaction and requested relief to the extent the liquidated value is deficient. Another comment questioned if any excess value must be paid to the Treasury Department when the liquidated value of the withheld digital assets is greater than 24 percent of the received digital assets at the time of the underlying transaction. Another comment stated that some brokers do not have processes in place to liquidate received digital assets daily to make required backup withholding deposits in U.S. dollars and requested that deposits to the Treasury Department be permitted in digital assets.

Section 3406 provides that if a payee fails to provide a TIN or certain other conditions are satisfied, the payor shall deduct and withhold from the reportable payment a tax equal to a rate that is currently 24 percent. The responsibility for ensuring that sufficient withholding tax is withheld is by statute a payor responsibility.

Moreover, brokers are in the best position to mitigate any volatility risks associated with disposing of digital assets received in an exchange of digital assets. For example, brokers may be able to minimize or eliminate their risk by implementing systems to shorten the time between the initial transaction and the liquidation of the withheld digital asset. Accordingly, the Treasury Department and the IRS have determined that it is not appropriate for the Federal government to accept the market risk of a customer's withheld digital asset. Instead, the risk should be borne in the first instance by the broker offering digital asset transactions to its customers. Accordingly, the final regulations do not adopt the suggestion to pass the price volatility risk of withheld digital assets onto the Federal government. However, *see* Part VI.D. of this *Summary of Comments and Explanation of Revisions* regarding temporary penalty relief for backup withholding, which is based in part on the risk of payment shortfalls due to the volatility of some digital assets.

The Treasury Department and the IRS understand that a broker may shift the withholding liability risk associated with price volatility to a customer who has invested in the withheld digital asset and has not provided a TIN under penalties of perjury. For example, as suggested by one comment, brokers could mandate that their customers who have not provided a certified TIN maintain with the broker cash margin accounts or digital asset accounts with relatively stable digital assets (such as stablecoins) for brokers to use to satisfy their backup withholding obligations. Brokers could also require their customers to agree to allow the brokers to sell for cash 24 percent of the disposed digital assets at the time of the transaction. In addition, brokers could remind customers that fail to provide their TINs as requested that the customer may be liable for penalties under section 6723 of the Code. Finally, brokers could mandate that their customers provide accurate tax documentation to avoid backup withholding obligations altogether. Because any such arrangement would be a commercial arrangement between the broker and its customer, these final regulations do not address such arrangements.

Several comments requested guidance (with examples) setting forth operational solutions to avoid broker liability with respect to this price fluctuation risk and additional time to put those solutions in place. The final regulations do not include specific examples because there appears to be

many solutions brokers could adopt that are industry and business specific. However, the Treasury Department and the IRS intend to study these rules further and may issue additional guidance.

One comment recommended that the final regulations be revised to prevent the application of cascading backup withholding in a sale of digital assets for different digital assets when the broker sells 24 percent of the received digital assets to pay the backup withholding tax on the initial transaction. For example, a customer exchanges 1 unit of digital asset AB for 100 units of digital asset CD (first transaction), and to apply backup withholding, the broker sells 24 percent (or 24 units) of digital asset CD for cash (second transaction). The comment recommended that the sale of the 24 units of CD in the second transaction not be subject to backup withholding if that sale is effected by the broker to satisfy its backup withholding obligations with respect to a sale of digital assets in exchange for different assets and the cash sale was effected by the broker on or prior to the date that the broker is required to deposit the backup withholding tax liability with respect to the underlying digital asset exchange. The Treasury Department and the IRS have determined that a limited backup withholding exception should apply in the case of cascading backup withholding obligations. To address this cascading backup withholding problem, the final regulations except certain sales for cash of withheld digital assets from the definition of sales required to be reported if the sale is undertaken immediately after the underlying sale to satisfy the broker's obligation under section 3406 to deduct and withhold a tax with respect to the underlying transaction. If that condition is met, the sale will be excepted from broker reporting and backup withholding will not apply. *See* final § 1.6045–1(c)(3)(ii)(D). The special rule for the identification of units withheld from a transaction, discussed in Part I.E.3.a. of this *Summary of Comments and Explanation of Revisions*, also ensures that the excepted sale of the withheld units does not give rise to any additional gain or loss.

Numerous comments requested an exception from backup withholding for transactions in which digital assets are exchanged for property (other than relatively liquid digital assets), such as traditional financial assets, real estate, goods, services, or different digital assets that cannot be fractionalized, such as NFTs and tokenized financial instruments (illiquid property), when

there is insufficient cash in the customer's account. Backup withholding is an essential enforcement tool to ensure that complete and accurate information returns can be filed by payors with respect to payments made to payees. Accurate TINs and other information provided by payors are critical to matching such information with income reported on a payee's Federal income tax return. A complete exception from backup withholding or an exception for sales of digital assets for illiquid property would increase the likelihood that customers will not provide correct TINs to their brokers. Such an exception would also raise factual questions about whether certain property received in a transaction is truly illiquid. For example, one broker might assert that a stored-value card in a fixed amount is illiquid if the broker cannot withhold 24 percent of the value of the card or if the resale market for those cards does not facilitate full face value payments. On the other hand, a different broker might decide to require the payee to send back cash in an amount representing 24 percent of the value of the card. Moreover, brokers have some ability to minimize their backup withholding in these circumstances by taking steps to ensure that the customer pays the backup withholding tax instead of the broker. For example, brokers could remind customers that failure to provide their TINs as requested may result in customers being liable for penalties under section 6723. Brokers also may be able to require customers that refuse to provide accurate tax documentation to maintain cash accounts or other digital asset accounts with the broker. Accordingly, subject to the transition relief discussed in Part VI.D. of this *Summary of Comments and Explanation of Revisions*, the final regulations do not provide an exception to backup withholding for sales of digital assets in exchange for illiquid property.

One comment requested relief from backup withholding when the fair market value of the received digital asset is not readily ascertainable. This comment also requested that the final regulations provide guidance clarifying what the broker must do to conclude that the value of received digital assets is not readily ascertainable. The final regulations do not adopt this comment because the fact pattern is not unique to digital asset transactions. Moreover, the final regulations provide rules, at final § 1.6045–1(d)(5)(ii)(A)(1) through (3), that brokers can use to determine the fair market value of gross proceeds

received by a customer in a digital asset transaction. For example, in the case of a customer that receives a unique NFT in exchange for other digital assets, the broker can look to the value of the disposed digital assets and use that value for the NFT.

Several comments requested an exemption from backup withholding for any sale of a qualifying stablecoin (whether for cash, another digital asset, or other property) because of the low likelihood that these stablecoin sales will give rise to significant gains or losses. Backup withholding on these transactions is a necessary tool to ensure that customers provide their tax documentation in accordance with regulatory requirements and to allow for correct income tax reporting of the gains and losses that do occur. Brokers that request customer TINs in accordance with regulatory requirements are not liable for information reporting penalties with respect to customers who refuse to comply. Backup withholding, therefore, is the only way to ensure that either the broker's customers will provide their TINs and the IRS will receive the information reporting required or that a tax is collected from those customers who do not want the IRS to learn about their activities. Additionally, and as discussed in Part I.D.2. of this *Summary of Comments and Explanation of Revisions*, the Treasury Department and the IRS have concluded that information about certain qualifying stablecoin transactions is essential to the IRS gaining visibility into previously unreported digital asset transactions. Accordingly, the final regulations do not adopt this comment. However, it should be noted, as discussed in Part I.D.1. of this *Summary of Comments and Explanation of Revisions*, if a broker reports information on designated qualifying stablecoins sales under the optional method of reporting, sales of non-designated qualifying stablecoins will not be reported. As such, final § 31.3406(b)(3)–2(b)(6)(i)(B)(1) provides that these non-designated sales of qualifying stablecoins will not be subject to backup withholding.

As discussed in Part I.D.2.a. of this *Summary of Comments and Explanation of Revisions*, there may be circumstances in which a digital asset loses its peg during a calendar year and therefore does not satisfy the conditions required to be a qualifying stablecoin. To give brokers time to learn about such de-pegging events and turn on backup withholding for non-designated sales, final § 31.3406(b)(3)–2(b)(6)(i)(B)(2) provides a grace period before withholding is required. Specifically, in

the case of a digital asset that would have satisfied the definition of a non-designated sale of a qualifying stablecoin under final § 1.6045–1(d)(10)(i)(C) for a calendar year but for a non-qualifying event during that year, a broker is not required to withhold under section 3406 on such sale if it occurs no later than the end of the day that is 30 days after the first non-qualifying event with respect to such digital asset during such year. For this purpose, a non-qualifying event is defined as the first date during a calendar year on which the digital asset no longer satisfies all three conditions described in final § 1.6045–1(d)(10)(ii)(A) through (C) to be a qualifying stablecoin. Finally, final § 31.3406(b)(3)–2(b)(6)(i)(B)(2) also provides that the date on which a non-qualifying event has occurred with respect to a digital asset and the date that is no later than 30 days after such non-qualifying event must be determined using UTC. As discussed in Part I.D.2.b. of this *Summary of Comments and Explanation of Revisions*, UTC time was chosen for this purpose to ensure that the same digital assets will or will not be subject to backup withholding for all brokers regardless of the time zone in which such broker keeps its books and records.

One comment recommended that the final regulations provide a *de minimis* threshold, similar to the \$600 threshold for income subject to reporting under section 6041, before backup withholding would be required for dispositions of digital assets for different digital assets or other non-cash property. Under section 3406(b)(4) and (6), unless the payment is of a kind required to be shown on a return required under sections 6041(a) or 6041A(a), the determination of whether any payment is of a kind required to be shown on a return must be made without regard to any minimum amount which must be paid before a return is required. While the Secretary may have the authority to apply a threshold that is established by regulation when determining whether any payment is of a kind that must be shown on a required return for backup withholding purposes, the Treasury Department and the IRS have determined that the application of these thresholds to the backup withholding rules would not be appropriate. Accordingly, although the final regulations provide *de minimis* thresholds for reporting payment transaction sales and designated sales of qualifying stablecoins and specified NFTs, the transactions that fall below the applicable gross proceeds thresholds

are nonetheless potentially taxable transactions that taxpayers must report on their Federal income tax returns. The Treasury Department and the IRS have concluded that customers that have not provided tax documentation to their brokers are less likely to report their digital asset transactions on their Federal income tax returns than customers who comply with the documentation requirements. Accordingly, the Treasury Department and the IRS have determined it is important to impose backup withholding on gross proceeds that fall below these thresholds. Therefore, under the final regulations, gross proceeds that are not required to be reported due to the application of the \$600 threshold for payment transaction sales, the \$10,000 threshold for designated sales of qualifying stablecoins, or the \$600 threshold for sales of specified NFTs are nonetheless reportable payments for purposes of backup withholding.

See Part VI.D. of this *Summary of Comments and Explanation of Revisions* for a discussion of certain transitional relief from backup withholding under section 3406.

C. Other Backup Withholding Issues

The proposed regulations requested comments addressing short sales of digital assets and whether any changes should be made to the backup withholding rules under § 31.3406(b)(3)–2(b)(3) and (4). In response, one comment requested that the final regulations clarify how gains or losses from short sales of digital assets are to be treated and what, if any, withholding is required for short sales of digital assets. Another comment requested that any backup withholding rules for short sales of digital assets take into account factors like holding periods, borrowed assets, and sale conditions. After considering the requests, as discussed in Part I.C. of this *Summary of Comments and Explanation of Revisions*, the Treasury Department and the IRS have determined that the substantive issues raised by these comments require further study. Accordingly, the final regulations do not address these comments and do not make any changes to these rules. However, see Part VII. of this *Summary of Comments and Explanation of Revisions* for a discussion of guidance being provided along with these final regulations to address reporting on certain transactions requiring further study.

Another comment requested guidance regarding how to apply the rules for making timely deposits of tax withheld

by brokers that operate 24 hours a day. This comment stated that brokers need to know what time (and based on what time zone) their day ends for purposes of making timely deposits and whether timely deposits are measured based on days or by 24 hour rolling periods. Another comment requested that the final regulations permit brokers to report based on the broker's time zone provided that the time zone is disclosed to the customer and is used consistently for all reporting years. Many businesses have continuous operations across several time zones. Because the proposed regulations did not propose any changes to the rules for making timely deposits of tax withheld by digital asset brokers, the final regulations do not provide a special rule for digital asset brokers.

Another comment requested guidance regarding the withholding rules for cross-border transactions, including the appropriate withholding rates under existing U.S. tax treaties. The final regulations do not address this comment because the withholding rules under chapter 3 of the Code are outside the scope of these regulations. See Part VI.D. of this *Summary of Comments and Explanation of Revisions* for a discussion of certain transitional relief from backup withholding under section 3406.

D. Applicability Date for Backup Withholding on Digital Asset Sales

Several comments requested that the imposition of backup withholding on dispositions of digital assets for cash, different digital assets, or other non-cash property be delayed until brokers can develop systems to implement withholding on these transactions. Other comments advised that software currently exists that can be embedded in any trading platform's user interface to help brokers obtain proper tax document from customers. The Treasury Department and the IRS have determined it is appropriate to provide temporary relief on the imposition of backup withholding for these transactions to give brokers the time they need to build and implement backup withholding systems for these types of transactions. Accordingly, the notice discussed in Part VI. of this *Summary of Comments and Explanation of Revisions* will also provide transitional relief from backup withholding under section 3406 for sales of digital assets as follows:

1. Digital Asset Sales for Cash

The Treasury Department and the IRS recognize that, although brokers engaging in these cash transactions may

be in a good position to obtain proper tax documentation, they will need time to build systems to collect and retain that documentation and to obtain that documentation from existing customers. Accordingly, to promote industry readiness to comply with the backup withholding requirements, Notice 2024–56 is being issued contemporaneously with these final regulations to provide transitional relief from backup withholding under section 3406 on these sales. This notice, which will be published in the Internal Revenue Bulletin, provides that the effective date for backup withholding date is postponed to January 1, 2026, for potential backup withholding obligations imposed under section 3406 for payments required to be reported on Forms 1099–DA for sale transactions. Additionally, for sale transactions effected in 2026 for customers that have opened accounts with the broker prior to January 1, 2026, the notice further provides that backup withholding will not apply with respect to any payee that furnishes a TIN to the broker, whether or not on a Form W–9 in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5, provided the broker submits that payee’s TIN to the IRS’s TIN matching program and receives a response that the TIN furnished by the payee is correct. *See* § 601.601(d)(2). Transitional relief also is being provided under these final regulations for sales of digital assets effected before January 1, 2027, that were held in a preexisting account established with a broker before January 1, 2026, if the customer has not been previously classified as a U.S. person by the broker, and the information the broker has for the customer includes a residence address that is not a U.S. address.

2. Sales of Digital Assets in Exchange for Different Digital Assets (Other Than Nonfungible Tokens That Cannot Be Fractionalized)

As discussed in Part VI.B. of this *Summary of Comments and Explanation of Revisions*, brokers are concerned with the logistics of withholding on sales of digital assets for different digital assets when the price of the digital assets received in the exchange fluctuates between time of transaction and the time the received digital assets are liquidated into U.S. dollars for deposit with the Treasury Department. Although there are steps brokers can take to diminish this price volatility risk or transfer this risk entirely to the customer, the Treasury Department and the IRS recognize that brokers need time to implement these procedures. Accordingly, in addition to

the delayed application of the backup withholding rules provided for digital assets sold for cash, Notice 2024–56 also provides that the IRS will not assert penalties for a broker’s failure to deduct, withhold, and pay any backup withholding tax that is caused by a decrease in the value of received digital assets (other than nonfungible tokens that the broker cannot fractionalize) between the time of the transaction giving rise to the backup withholding liability and the time the broker liquidates 24 percent of the received digital assets, provided the broker undertakes to effect that liquidation immediately after the transaction giving rise to the backup withholding liability.

One comment recommended that the final regulations apply backup withholding to sales of digital assets other than stablecoins in exchange for stablecoins under the same rules as apply to sales of digital assets for cash. The final regulations do not adopt this comment. Although there may be less price volatility risks in received stablecoins than there is with other digital assets, stablecoins are not cash and are not treated as such by these regulations.

3. Sales of Digital Assets in Exchange for Other Property

As discussed in Part VI.B. of this *Summary of Comments and Explanation of Revisions*, the final regulations do not provide an exception to backup withholding for sales of digital assets in exchange for illiquid property. The Treasury Department and the IRS, however, understand that there are additional practical issues with requiring backup withholding on PDAP sales and sales effected by real estate reporting persons because these brokers typically cannot withhold from the proceeds, which would typically be the goods or services (or real estate) purchased. Accordingly, in addition to the delayed application of the backup withholding rules provided for digital assets sold for cash, Notice 2024–56 also provides that the IRS will not apply the backup withholding rules to any PDAP sale or to any sale effected by a real estate reporting person until further guidance is issued.

VII. Applicability Dates and Penalty Relief

The Treasury Department and the IRS received and considered many comments about the applicability dates contained in the proposed regulations. Multiple comments requested additional time beyond the proposed applicability date for gross proceeds reporting on transactions occurring on

or after January 1, 2025, and for basis reporting for transactions occurring on or after January 1, 2026. Comments asked for time ranging from one to five years after publication of the final rules to prepare for reporting transactions, with the most common suggestion being an applicability date between 18 and 24 months after publication of the final regulations. Several comments suggested that broker reporting begin at the same time as CARF reporting, either for all brokers or for non-U.S. brokers. Multiple comments requested that the final regulations become applicable in stages, with many suggesting that custodial industry participants should be required to report during the first stage but that non-custodial participants should begin reporting a year or more later. Comments generally pointed to the time needed to build information reporting systems and to adequately document customers to support their recommendation of later applicability dates. They also cited concerns about fulfilling backup withholding requirements and adapting to filing a new information return, the Form 1099–DA, and about the IRS’s ability to receive and process a large number of new forms.

Conversely, some comments indicated that the proposed applicability dates were appropriate. As one comment noted, some digital asset brokers reported digital asset transactions on Forms 1099–B before the passage of the Infrastructure Act. Similarly, another comment stated that brokers that make payments to customers in the form of staking rewards or income from lending digital assets are already required to file and furnish Forms 1099–MISC, *Miscellaneous Information*, to those customers. Accordingly, in the view of these comments, those brokers have some experience with documenting customers and handling their personally identifiable information. Finally, one comment stated that if transaction ID, digital asset address, and time of the transaction were not required to be reported, then existing traditional financial reporting solutions could be expanded relatively easily to include reporting on dispositions of digital assets.

The Treasury Department and the IRS agree that a phased-in or staged approach to broker reporting is appropriate and have determined that the proposed applicability dates for gross proceeds and basis reporting should be retained in the final regulations for custodial industry participants. At least some of these participants have experience reporting transactions involving their customers.

Further, as described in Part I.D. of this *Summary of Comments and Explanation of Revisions*, under the final regulations, these brokers will not be required to report the time of the transaction, the digital asset address or the transaction ID on Forms 1099-DA. Brokers will be required to report basis for transactions occurring on or after January 1, 2026, but only with respect to digital assets the customer acquired from, and held with, the same broker on or after January 1, 2026. Although the proposed regulations required basis reporting for assets acquired on or after January 1, 2023, it is anticipated that moving the acquisition date to on or after January 1, 2026, and eliminating the need to track basis retroactively will assist brokers in preparing to report basis for transactions that occur beginning in 2026. See Part I.F. of this *Summary of Comments and Explanation of Revisions* for a discussion of the changes made to the basis reporting rules. Finally, and as more fully described in Part I.B.1.b. of this *Summary of Comments and Explanation of Revisions*, the proposed digital asset middleman rules that would apply to non-custodial industry participants are not being finalized with these final regulations. The Treasury Department and the IRS intend to expeditiously issue separate final regulations describing information reporting rules for non-custodial industry participants with an appropriate, separate applicability date.

The rules of final § 1.1001-7 apply to all sales, exchanges, and dispositions of digital assets on or after January 1, 2025.

The rules of final § 1.1012-1(h) apply to all acquisitions and dispositions of digital assets on or after January 1, 2025. The rules of final § 1.1012-1(j) apply to all acquisitions and dispositions of digital assets on or after January 1, 2025.

The rules of final § 1.6045-1 apply to sales of digital assets on or after January 1, 2025.

The amendments to the rules of final § 1.6045-4 apply to real estate transactions with dates of closing occurring on or after January 1, 2026.

The changes made in final § 1.6045A-1 limit the application of the pre-2024 final regulations in the case of digital assets. Accordingly, these changes apply as of the effective date of this Treasury decision.

The rules of final § 1.6045B-1 apply to organizational actions occurring on or after January 1, 2025, that affect the basis of digital assets that are also described in one or more paragraphs of § 1.6045-1(a)(14)(i) through (iv).

The rules of final § 1.6050W-1 apply to payments made using digital assets on or after January 1, 2025.

The rules of final § 31.3406(b)(3)-2 apply to reportable payments by a broker to a payee with respect to sales of digital assets on or after January 1, 2025, that are required to be reported under section 6045.

The rules of final § 31.3406(g)-1 apply on or after January 1, 2025, and the rules of final § 31.3406(g)-2 apply to sales of digital assets on or after January 1, 2026.

The rules of final § 301.6721-1(h)(3)(iii) apply to returns required to be filed on or after January 1, 2026. The rules of final § 301.6722-1(e)(2)(viii) apply to payee statements required to be furnished on or after January 1, 2026.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6(b) of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

In general, the collection of information in the regulations is required under section 6045. The collection of information in these regulations with respect to dispositions of digital assets is set forth in final § 1.6045-1 and the collection of information with respect to dispositions of real estate in consideration for digital assets is set forth in final § 1.6045-4. The IRS intends that the collection of information pursuant to final § 1.6045-1 will be conducted by way of Form 1099-DA and that the collection of information pursuant to final § 1.6045-4 will be conducted through a revised Form 1099-S.

The proposed regulations contained burden estimates regarding the collection of information with respect to the dispositions of digital assets and the collection of information with respect to dispositions of real estate in consideration for digital assets. For the proposed regulations, the Treasury Department and the IRS estimated that approximately 600 to 9,500 brokers would be impacted by the proposed regulations. The proposed regulations also contained an estimate of between 7.5 minutes and 10.5 minutes as the average time to complete the required Forms 1099 for each customer. And the proposed regulations also contained an estimate of 13 to 16 million customers

that would have transactions subject to the proposed regulations. Taking the mid-points of the ranges for the number of brokers expected to be impacted by these regulations, the number of taxpayers expected to receive one or more Forms 1099 required by these regulations, and the time to complete those required forms (5,050 brokers, 14.5 million recipients, and 9 minutes respectively), the proposed regulations estimated the average broker would incur 425 hours of time burden and \$27,000 of monetized burden for the ongoing costs per year. The proposed regulations contained estimates of 2,146,250 total annual burden hours and \$136,350,000 in total monetized annual burden.

The proposed regulations estimated start-up costs to be between three to eight times annual costs. Given that the Treasury Department and the IRS expected per firm annual estimated burden hours to be 425 hours and \$27,000 of estimated monetized burden, the proposed regulations estimated per firm start-up aggregate burden hours to range from 1,275 to 3,400 hours and \$81,000 to \$216,000 of aggregate monetized burden. Using the mid-points, start-up total estimated aggregate burden hours was 11,804,375 and total estimated monetized burden is \$749,925,000.

Regarding the Form 1099-DA, the burden estimate must reflect the continuing costs of collecting and reporting the information required by these regulations as well as the upfront or start-up costs associated with creating the systems to collect and report the information taking into account all of the comments received, as well as the changes made in these final regulations that will affect the paperwork burden. A reasonable burden estimate for the average time to complete these forms for each customer is 9 minutes (0.15 hours). The Treasury Department and the IRS estimate that 13 to 16 million customers will be impacted by these final regulations (mid-point of 14.5 million customers). The Treasury Department and the IRS estimate that approximately 900 to 9,700 brokers will be impacted by these final regulations (mid-point of 5,300 brokers). The Treasury Department and the IRS estimate the average broker to incur approximately 425 hours of time burden and \$28,000 of monetized burden. The total estimated aggregate annual burden hours is 2,252,500 and the total estimated monetized burden is \$148,400,000.

Additionally, start-up costs are estimated to be between five and ten times annual costs. Given that we

expect per firm annual estimated burden hours to be 425 hours and \$28,000 of estimated monetized burden, the Treasury Department and the IRS estimate per firm start-up aggregate burden hours from 2,125 to 4,250 hours and \$140,000 to \$280,000 of aggregate monetized burden. Using the mid-points, start-up total estimated aggregate burden hours is 3,188 and total estimated monetized burden is \$210,000 per firm. The total estimated aggregate burden hours is 16,896,400 and total estimated monetized burden is \$1,113,000,000.

Based on the most recent OMB burden estimate for the average time to complete Form 1099-S, it was estimated that the IRS received a total number of 2,563,400 Form 1099-S responses with a total estimated time burden for those responses of 411,744 hours (or 9.6 minutes per Form). Neither a material change in the average time to complete the revised Form, nor a material increase in the number of Forms that will be filed is expected once these final regulations are effective. No material increase is expected in the start-up costs and it is anticipated that less than 1 percent of Form 1099-S issuers will be impacted by this change.

Numerous comments were received on the estimates contained in the proposed regulations. Many of these comments asserted that the annual estimated time and monetized burdens were too low. Some comments recommended that the estimates be recalculated using a total of 8 billion Forms 1099-DA filed and furnished annually. The request to use this number was based on a public statement made by a former IRS employee. The Treasury Department and the IRS do not adopt this recommendation because the reference to 8 billion returns was not based on the requirements in the proposed or final regulations. Some comments attempted to calculate the monetized burden for specific exchanges using the average amounts used in the proposed regulations. The Treasury Department and the IRS also note that any attempts to recalculate the monetized burden for specific exchanges will likely yield unrealistic results. The monetized burden is based on average costs, and it is expected that smaller firms may experience lower costs overall but higher costs on an average per customer basis. This is because while the ongoing costs of reporting information to the IRS may be small, there will be larger costs associated with the initial setup. It is expected that the larger initial setup costs will likely be amortized among more customers for the larger

exchanges. The Treasury Department and the IRS anticipate conducting a survey in the future to determine the actual costs of compliance with these regulations; however, the estimates used in these final regulations are based on the best currently available information.

Multiple comments said that the estimated number of brokers impacted by the proposed regulations was too low. One comment said the number of entities affected should include everyone who uses credit cards or travels in the United States and should therefore be millions of people. That comment also said the number of entities affected should include individual taxpayers since the proposed regulations includes rules affecting individual taxpayers. One comment said the estimate was too low because it underestimated the impact on decentralized autonomous organizations, governance token holders, operators of web applications, and other similarly situated potential brokers. The estimated number of brokers in these final regulations was not increased based on these comments because the issues raised by these comments do not impact the number of brokers subject to the broker reporting requirements of these final regulations. The definition of a digital asset is not intended to apply to the types of virtual assets that exist only in a closed system and cannot be sold or exchanged outside that system for fiat currency; therefore, credit card points are not digital assets subject to reporting under these final regulations. The final regulations include substantive rules for computing the sale or other disposition of digital assets, but because taxpayers are already required to calculate and report their tax liability under existing law, these regulations do not impose an additional reporting requirement on these individuals. Finally, the Treasury Department and the IRS are not increasing the burden estimates based on comments about decentralized autonomous organizations or operators of web applications because the final regulations apply only to digital asset industry participants that take possession of the digital assets being sold by their customers, namely operators of custodial digital asset trading platforms, certain digital asset hosted wallet providers, certain PDAPs, and digital asset kiosks, and to certain real estate persons that are already subject to the broker reporting rules.

The Treasury Department and the IRS estimate that approximately 900 to 9,700 brokers, with a mid-point of 5,300, will be impacted by these final regulations. The lower bound of this

estimate was derived using Form 1099 issuer data through 2022 and statistics on the number of exchanges from *CoinMarketCap.com*. Because the Form 1099 issuer data and statistics from CoinMarketCap do not distinguish between centralized and decentralized exchanges, this estimate likely overestimates the number of brokers that will be impacted by these final regulations. The upper bound of this estimate is based on IRS data for brokers with nonzero revenue who may deal in digital assets, specifically the number of issuers with North American Classification System (NAICS) codes for Securities Brokerage (52312), Commodity Contracts Dealing (52313) and Commodity Contracts Brokerage (52314).

The proposed regulations estimated the average time to complete these Forms for each customer as between 7.5 minutes and 10.5 minutes, with a mid-point of 9 minutes (or 0.15 hours). Some comments said the 9-minute average time to complete these Forms for each customer is too low, with one comment stating it underestimated time to complete by at least two orders of magnitude. Another comment said considering the complexity and specificity of the proposed reporting, including the requirement to report the time of transactions, the average time should be 15 minutes. The final regulations remove the requirement to report the time of the transaction. The final regulations also remove the obligation to report transaction ID and digital asset addresses. Additionally, the final regulations include a *de minimis* rule for PDAPs and an optional alternative reporting method for sales of certain NFTs and qualifying stablecoins to allow for aggregate reporting instead of transaction reporting, with a *de minimis* annual threshold below which no reporting is required, which the Treasury Department and the IRS anticipate will further reduce the reporting burden. Given the final regulations more streamlined reporting requirements, the Treasury Department and the IRS have concluded that the original estimate for the average time to complete these Forms was reasonable and retain the estimated average time to complete these Forms for each customer of between 7.5 minutes and 10.5 minutes, with a mid-point of 9 minutes (or 0.15 hours).

The proposed regulations estimated that 13 to 16 million customers will be impacted by these proposed regulations. Some comments asserted that the estimated number of customers was too low. One comment said the estimate was too low because it assumes that

each of the affected taxpayers would generate a single Form 1099-DA, but that this is incorrect because brokers generally are required to submit separate reports for each sale by each customer. That comment also said that if substitute annual Forms 1099 and payee statements were permissible, the average affected taxpayer likely would generate between 40 to 50 information returns per year. That comment also asserted that the estimate of 14.5 million customers is too low because 40 to 50 million Americans currently own digital assets and 75 million may transact in digital assets this year. Some comments said the estimated number of customers should be 8 billion based on a statement from a former IRS official.

The Treasury Department and the IRS have not updated the estimated number of customers impacted by these final regulations based on these comments. The burden estimate is based on the number of taxpayers who will receive Forms 1099-DA rather than the number of Forms 1099-DA that each taxpayer receives because the primary broker burden is related to the system design and implementation required by these final regulations, including the requirements to confirm or obtain customer identification information. The burden associated with each additional Form 1099-DA required per customer is expected to be marginal compared with the cost of implementing the reporting system. While comments indicated more taxpayers own and transact in digital assets than estimated in the proposed regulations, the Treasury Department and the IRS have concluded that information included on information returns filed with the IRS and tax returns signed under penalties of perjury is the most accurate information currently available for the purpose of estimating the number of affected taxpayers. The Treasury Department and the IRS estimate the number of customers impacted by these final regulations will be between 13 million and 16 million with a midpoint of 14,500,000. The estimate is based on the number of taxpayers who received one or more Forms 1099 reporting digital asset activity in tax year 2021, plus the number of taxpayers who responded yes to the digital asset question on their Form 1040 for tax year 2021.

The proposed regulations used a \$63.53 per hour estimate to monetize the burden. The proposed regulations used wage and compensation data from the Bureau of Labor Statistics (BLS) that capture the wage, benefit, and overhead costs of a typical tax preparer to estimate the average broker's monetized

burden. Some comments said that the monetized burden in the proposed regulations was too low. One comment said the wage and compensation rate used in the proposed regulations was too low because these compliance costs capture the cost of a typical tax preparer and not the atypical digital asset-specific tax and legal expertise needed to comply with these rules. Another comment said the wage and compensation rate was underestimated because of the higher labor cost per hour given the specialized nature of the reporting, the volume of data and cross-functional effort required and similar factors. The Treasury Department and the IRS do not accept the comments that the monetization rate is too low and have concluded that the methodology to determine the rate is correct given the information available about broker reporting costs. The final regulations use an average monetization rate of \$65.49. This updated estimate is based on survey data collected from filers of similar information returns with NAICS codes for Securities Brokerage (52312), Commodity Contracts Dealing (52313) and Commodity Contracts Brokerage (52314), adjusted for inflation. A lower bound is set at the Federal minimum wage plus employment taxes. The upper bound is set using rates from the BLS Occupational Employment Statistics (OES) and the BLS Employer Costs for Employee Compensation from the National Compensation Survey. Specifically, the estimate uses the 90th percentile for accountants and auditors from the OES and the ratio of total compensation to wages and salaries from the private industry workers (management, professional, and related occupations) to account for fringe benefits.

The proposed regulations estimated that initial start-up costs would be between three to eight times annual costs. Some comments said these costs were underestimated because many brokers are newer companies with limited funding and resources. Other comments stated the start-up costs of compliance would hurt innovation. Another comment said the multiple applied was too low and that using a multiplier for start-up costs between five to ten times annual costs would yield a more reasonable estimate of the start-up costs for such a complex reporting regime and would more closely align with prior outcomes for similar regimes that are currently subject to reporting. Because start-up costs are difficult to measure, the Treasury Department and the IRS use a multiplier of annual costs to estimate

the start-up costs. To further acknowledge the difficulty of estimating these cases, the Treasury Department and the IRS have accepted the comment to revise the burden estimate to reflect that start-up costs would be between five and ten times annual costs.

In summary, the Treasury Department and the IRS estimate that 13 to 16 million customers will be impacted by these final regulations (mid-point of 14.5 million customers). A reasonable burden estimate for the average time to complete these forms for each customer is 9 minutes (0.15 hours). The Treasury Department and the IRS estimate that approximately 900 to 9,700 brokers will be impacted by these final regulations (mid-point of 5,300 brokers). The Treasury Department and the IRS estimate the average time burden per broker will be approximately 425 hours. The Treasury Department and the IRS use an estimate that the cost of compliance will be \$65.49 per hour, so the total monetized burden is estimated at \$28,000 per broker.

Additionally, start-up costs are estimated to be between five and ten times annual costs. Given the expected per-firm annual burden estimates of 425 hours and \$28,000, the Treasury Department and the IRS estimate per-firm start-up burdens as between 2,125 to 4,250 hours and \$140,000 to \$280,000 of aggregate monetized burden. Using the mid-points, start-up total estimated aggregate burden hours is 3,188 hours and total estimated monetized burden is \$210,000 per firm.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. On April 22, 2024, the IRS released and invited comments on the draft Form 1099-DA. The draft Form 1099-DA is available on <https://www.irs.gov>. Also on April 22, 2024, the IRS published in the **Federal Register** (89 FR 29433) a Notice and request for comments on the collection of information requirements related to the broker regulations with a 60-day comment period. There will be an additional 30-day comment period beginning on the date a second Notice and request for comments on the collection of information requirements related to the broker regulations is published in the **Federal Register**. The OMB Control Number for the Form 1099-S is 1545-0997. The Form 1099-S will be updated for real estate reporting, which applies to transactions occurring on or after January 1, 2026.

Books or records relating to a collection of information must be

retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) requires agencies to “prepare and make available for public comment an initial regulatory flexibility analysis,” which will “describe the impact of the rule on small entities.” 5 U.S.C. 603(a). Unless an agency determines that a proposal will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present a final regulatory flexibility analysis (FRFA) of the final regulations. The Treasury Department and the IRS have not determined whether these final regulations will likely have a significant economic impact on a substantial number of small entities. This determination requires further study. Because there is a possibility of significant economic impact on a substantial number of small entities, a FRFA is provided in these final regulations.

The expected number of impacted issuers of information returns under these final regulations is between 900 to 9,700 brokers (mid-point of 5,300). Small Business Administration regulations provide small business size standards by NAICS Industry. *See* 13 CFR 121.201. The NAICS includes virtual currency exchange services in the NAICS code for Commodity Contracts Dealing (52313). According to the Small Business Administration regulations, the maximum annual receipts for a concern and its affiliates to be considered small in this NAICS code is \$41.5 million. Based on tax return data, only 200 of the 9,700 firms identified as impacted issuers in the upper bound estimate exceed the upper bound estimate exceed the \$41.5 million threshold. This implies there could be 700 to 9,500 impacted small business issuers under the Small Business Administration’s small business size standards.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

A. Need for and Objectives of the Rule

Information reporting is essential to the integrity of the tax system. The IRS estimated in its 2019 tax gap analysis

that net misreporting as a percent of income for income with little to no third party information reporting is 55 percent. In comparison, misreporting for income with some information reporting, such as capital gains, is 17 percent, and for income with substantial information reporting, such as dividend and interest income, is just five percent.

Prior to these final regulations, many transactions involving digital assets were outside the scope of information reporting rules. Digital assets are treated as property for Federal income tax purposes. The regulations under section 6045 require brokers to file information returns for customers that sell certain types of property providing gross proceeds and, in some cases, adjusted basis. However, the existing regulations do not specify digital assets as a type of property for which information reporting is required. Section 6045 also requires information returns for real estate transactions, but the existing regulations do not require reporting of amounts received in digital assets. Section 6050W requires information reporting by payment settlement entities on certain payments made with respect to payment card and third-party network transactions. However, the existing regulations are silent as to whether certain exchanges involving digital assets are reportable payments under section 6050W.

Information reporting by brokers and real estate reporting persons under section 6045 with respect to certain digital asset dispositions and digital asset payments received by real estate transferors will lead to higher levels of taxpayer compliance because the income earned by taxpayers engaging in transactions involving digital assets will be made more transparent to both the IRS and taxpayers. Clear information reporting rules that require reporting of gross proceeds and, in some cases, adjusted basis for taxpayers who engage in digital asset transactions will help the IRS identify taxpayers who have engaged in these transactions, and thereby help to reduce the overall tax gap. These final regulations are also expected to facilitate the preparation of tax returns (and reduce the number of inadvertent errors or intentional misstatements shown on those returns) by and for taxpayers who engage in digital asset transactions.

B. Affected Small Entities

As discussed above, we anticipate 9,500 of the 9,700 (or 98 percent) impacted issuers in the upper bound estimate could be small businesses.

1. Impact of the Rules

As previously stated in the Paperwork Reduction Act section of this preamble, the Form 1099-DA prescribed by the Secretary for reporting sales of digital assets pursuant to final § 1.6045-1(d) of these final regulations is expected to create an average estimated per customer burden on brokers of between 7.5 and 10.5 minutes, with a mid-point of 9 minutes (or 0.15 hours). In addition, the form is expected to create an average estimated per firm start-up aggregated burden of between 2,125 to 4,250 hours in start-up costs to build processes to comply with the information reporting requirements. The revised Form 1099-S prescribed by the Secretary for reporting gross proceeds from the payment of digital assets paid to real estate transferors as consideration in a real estate transaction pursuant to final § 1.6045-4(i) of these final regulations is not expected to change overall costs to complete the revised form. Because we expect that filers of revised Form 1099-S will already be filers of the form, we do not expect them to incur a material increase in start-up costs associated with the revised form.

Although small businesses may engage tax reporting services to complete, file, and furnish information returns to avoid the start-up costs associated with building an internal information reporting system for sales of digital assets, it remains difficult to predict whether the economies of scale efficiencies of using these services will offset the somewhat more burdensome ongoing costs associated with using third party contractors.

2. Alternatives Considered for Small Businesses

The Treasury Department and the IRS considered alternatives to these final regulations that would have created an exception to reporting, or a delayed applicability date, for small businesses but decided against such alternatives for several reasons. As discussed above, we anticipate that 9,500 of the 9,700 (or 98 percent) impacted issuers in the upper bound estimate could be small businesses. First, one purpose of these regulations is to eliminate the overall tax gap. Any exception or delay to the information reporting rules for small business brokers, which may comprise the vast majority of impacted issuers, would reduce the effectiveness of these final regulations. In addition, such an exception or delay could have the unintended effect of incentivizing taxpayers to move their business to excepted small businesses, thus thwarting IRS efforts to identify

taxpayers engaged in digital asset transactions. Additionally, because the information reported on statements furnished to customers will likely be an aid to tax return preparation by those customers, small business brokers will be able to offer their customers the same amount of useful information as their larger competitors. Finally, to the extent investors in digital asset transactions are themselves small businesses, these final regulations will help these businesses with their own tax preparation efforts.

3. Duplicate, Overlapping, or Relevant Federal Rules

These final regulations do not overlap or conflict with any relevant Federal rules. As discussed above, the multiple broker rule ensures, in certain instances, that duplicative reporting is not required.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have federalism implications, does not impose substantial direct compliance costs on State and local governments, and does not preempt State law within the meaning of the Executive order.

VI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a major rule as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices and other guidance cited in this document are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal authors of these regulations are Roseann Cutrone, Office of the Associate Chief Counsel (Procedure and Administration) and Alexa Dubert, Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS, including Jessica Chase, Office of the Associate Chief Counsel (Procedure and Administration), Kyle Walker, Office of the Associate Chief Counsel (Income Tax and Accounting), John Sweeney and Alan Williams, Office of Associate Chief Counsel (International), and Pamela Lew, Office of Associate Chief Counsel (Financial Institutions and Products), participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, and 301 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1001–1 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 1.1001–1 Computation of gain or loss.

(a) * * * For rules determining the amount realized for purposes of

computing the gain or loss upon the sale, exchange, or other disposition of digital assets, as defined in § 1.6045–1(a)(19), other than a digital asset not required to be reported as a digital asset pursuant to § 1.6045–1(c)(8)(ii), (iii), or (iv), *see* § 1.1001–7.

* * * * *

■ **Par. 3.** Section 1.1001–7 is added to read as follows:

§ 1.1001–7 Computation of gain or loss for digital assets.

(a) *In general.* This section provides rules to determine the amount realized for purposes of computing the gain or loss upon the sale, exchange, or other disposition of digital assets, as defined in § 1.6045–1(a)(19) other than a digital asset not required to be reported as a digital asset pursuant to § 1.6045–1(c)(8)(ii), (iii), or (iv).

(b) *Amount realized in a sale, exchange, or other disposition of digital assets for cash, other property, or services—*(1) *Computation of amount realized—*(i) *In general.* If digital assets are sold or otherwise disposed of for cash, other property differing materially in kind or in extent, or services, the amount realized is the excess of:

(A) The sum of:

(1) Any cash received;

(2) The fair market value of any property received or, in the case of a debt instrument described in paragraph (b)(1)(iv) of this section, the amount determined under paragraph (b)(1)(iv) of this section; and

(3) The fair market value of any services received; reduced by

(B) The amount of digital asset transaction costs, as defined in paragraph (b)(2)(i) of this section, allocable to the sale or disposition of the transferred digital asset, as determined under paragraph (b)(2)(ii) of this section.

(ii) *Digital assets used to pay digital asset transaction costs.* If digital assets are used or withheld to pay digital asset transaction costs, as defined in paragraph (b)(2)(i) of this section, such use or withholding is a disposition of the digital assets for services.

(iii) *Application of general rule to certain sales, exchanges, or other dispositions of digital assets.* The following paragraphs (b)(1)(iii)(A) through (C) of this section apply the rules of this section to certain sales, exchanges, or other dispositions of digital assets.

(A) *Sales or other dispositions of digital assets for cash.* The amount realized from the sale of digital assets for cash is the sum of the amount of cash received plus the fair market value of services received as described in paragraph (b)(1)(ii) of this section,

reduced by the amount of digital asset transaction costs allocable to the disposition of the transferred digital assets, as determined under paragraph (b)(2)(ii) of this section.

(B) *Exchanges or other dispositions of digital assets for services, or certain property.* The amount realized on the exchange or other disposition of digital assets for services or property differing materially in kind or in extent, other than digital assets or debt instruments described in paragraph (b)(1)(iv) of this section, is the sum of the fair market value of such property and services received (including services received as described in paragraph (b)(1)(ii) of this section), reduced by the amount of digital asset transaction costs allocable to the disposition of the transferred digital assets, as determined under paragraph (b)(2)(ii) of this section.

(C) *Exchanges of digital assets.* The amount realized on the exchange of one digital asset for another digital asset differing materially in kind or in extent is the sum of the fair market value of the digital asset received plus the fair market value of services received as described in paragraph (b)(1)(ii) of this section, reduced by the amount of digital asset transaction costs allocable to the disposition of the transferred digital asset, as determined under paragraph (b)(2)(ii) of this section.

(iv) *Debt instrument issued in exchange for digital assets.* For purposes of this section, if a debt instrument is issued in exchange for digital assets and the debt instrument is subject to § 1.1001-1(g), the amount attributable to the debt instrument is determined under § 1.1001-1(g) (in general, the issue price of the debt instrument).

(2) *Digital asset transaction costs—(i) Definition.* The term *digital asset transaction costs* means the amounts paid in cash or property (including digital assets) to effect the sale, disposition or acquisition of a digital asset. Digital asset transaction costs include transaction fees, transfer taxes, and commissions.

(ii) *Allocation of digital asset transaction costs.* This paragraph (b)(2)(ii) provides the rules for allocating digital asset transaction costs to the sale or disposition of a digital asset. Accordingly, any other allocation or specific assignment of digital asset transaction costs is disregarded.

(A) *In general.* Except as provided in paragraph (b)(2)(ii)(B) of this section, the total digital asset transaction costs paid by the taxpayer in connection with the sale or disposition of digital assets are allocable to the sale or disposition of the digital assets.

(B) *Special rule for allocation of certain cascading digital asset transaction costs.* This paragraph (b)(2)(ii)(B) provides a special rule in the case of a transaction described in paragraph (b)(1)(iii)(C) of this section (original transaction) and for which digital assets are withheld from digital assets acquired in the original transaction to pay the digital asset transaction costs to effect the original transaction. The total digital asset transaction costs paid by the taxpayer to effect both the original transaction and any disposition of the withheld digital assets are allocable exclusively to the disposition of digital assets in the original transaction.

(3) *Time for determining fair market value of digital assets.* Generally, the fair market value of a digital asset is determined as of the date and time of the sale or disposition of the digital asset.

(4) *Special rule when the fair market value of property or services cannot be determined.* If the fair market value of the property (including digital assets) or services received in exchange for digital assets cannot be determined with reasonable accuracy, the fair market value of such property or services must be determined by reference to the fair market value of the digital assets transferred as of the date and time of the exchange. This paragraph (b)(4), however, does not apply to a debt instrument described in paragraph (b)(1)(iv) of this section.

(5) *Examples.* The following examples illustrate the application of paragraphs (b)(1) through (3) of this section. Unless the facts specifically state otherwise, the transactions described in the following examples occur after the applicability date set forth in paragraph (c) of this section. For purposes of the examples under this paragraph (b)(5), assume that TP is a digital asset investor, and each unit of digital asset A, B, and C is materially different in kind or in extent from the other units. See § 1.1012-1(h)(4) for examples illustrating the determination of basis of digital assets.

(i) *Example 1: Exchange of digital assets for services—(A) Facts.* TP owns a total of 20 units of digital asset A, and each unit has an adjusted basis of \$0.50. X, an unrelated person, agrees to perform cleaning services for TP in exchange for 10 units of digital asset A, which together have a fair market value of \$10. The fair market value of the services performed by X also equals \$10. X then performs the services, and TP transfers 10 units of digital asset A to X. Additionally, TP pays \$1 in cash of transaction fee to dispose of digital asset A.

(B) *Analysis.* Under paragraph (b)(1) of this section, TP has a disposition of 10 units of digital asset A for services received. Under

paragraphs (b)(2)(i) and (b)(2)(ii)(A) of this section, TP has digital asset transaction costs of \$1, which must be allocated to the disposition of digital asset A. Under paragraph (b)(1)(i) of this section, TP's amount realized on the disposition of the units of digital asset A is \$9, which is the fair market value of the services received, \$10, reduced by the digital asset transaction costs allocated to the disposition of digital asset A, \$1. TP recognizes a gain of \$4 on the exchange (\$9 amount realized reduced by \$5 adjusted basis in 10 units).

(ii) *Example 2: Digital asset transaction costs paid in cash in an exchange of digital assets—(A) Facts.* TP owns a total of 10 units of digital asset A, and each unit has an adjusted basis of \$0.50. TP uses BEX, an unrelated third party, to effect the exchange of 10 units of digital asset A for 20 units of digital asset B. At the time of the exchange, each unit of digital asset A has a fair market value of \$2 and each unit of digital asset B has a fair market value of \$1. BEX charges \$2 per transaction, which BEX requires its customers to pay in cash. At the time of the transaction, TP pays BEX \$2 in cash.

(B) *Analysis.* Under paragraph (b)(2)(i) of this section, TP has digital asset transaction costs of \$2. Under paragraph (b)(2)(ii)(A) of this section, TP must allocate such costs (\$2) to the disposition of the 10 units of digital asset A. Under paragraphs (b)(1)(i) and (b)(3) of this section, TP's amount realized from the exchange is \$18, which is the fair market value of the 20 units of digital asset B received (\$20) as of the date and time of the transaction, reduced by the digital asset transaction costs allocated to the disposition of digital asset A (\$2). TP recognizes a gain of \$13 on the exchange (\$18 amount realized reduced by \$5 adjusted basis in the 10 units of digital asset A).

(iii) *Example 3: Digital asset transaction costs paid with other digital assets—(A) Facts.* The facts are the same as in paragraph (b)(5)(ii)(A) of this section (the facts in Example 2), except that BEX requires its customers to pay transaction fees using units of digital asset C. TP has an adjusted basis in each unit of digital asset C of \$0.50. TP transfers 2 units of digital asset C to BEX to effect the exchange of digital asset A for digital asset B. TP also pays to BEX an additional unit of digital asset C for services rendered by BEX to effect the disposition of digital asset C for payment of the transaction costs. The fair market value of each unit of digital asset C is \$1.

(B) *Analysis.* TP disposes of 3 units of digital asset C for services described in paragraph (b)(1)(ii) of this section. Therefore, under paragraph (b)(2)(i) of this section, TP has digital asset transaction costs of \$3. Under paragraph (b)(2)(ii)(A) of this section, TP must allocate \$2 of such costs to the disposition of the 10 units of digital asset A. TP must also allocate \$1 of such costs to the disposition of the 3 units of digital asset C. None of the digital asset transaction costs are allocable to the acquired units of digital asset B. Under paragraphs (b)(1)(i) and (b)(3) of this section, TP's amount realized on the disposition of digital asset A is \$18, which is the excess of the fair market value of the 20 units of digital asset B received (\$20) as

of the date and time of the transaction over the allocated digital asset transaction costs (\$2). Also, under paragraphs (b)(1)(i) and (b)(3) of this section, TP's amount realized on the disposition of the 3 units of digital asset C is \$2, which is the excess of the gross proceeds determined as of the date and time of the transaction over the allocated digital asset transaction costs of \$1. TP recognizes a gain of \$13 on the disposition of 10 units of digital asset A (\$18 amount realized over \$5 adjusted basis) and a gain of \$0.50 on the disposition of the 3 units of digital asset C (\$2 amount realized over \$1.50 adjusted basis).

(iv) *Example 4: Digital asset transaction costs withheld from the transferred digital assets in an exchange of digital assets—(A) Facts.* The facts are the same as in paragraph (b)(5)(ii)(A) of this section (the facts in *Example 2*), except that BEX requires its payment be withheld from the units of the digital asset transferred. At the time of the transaction, BEX withholds 1 unit of digital asset A. TP exchanges the remaining 9 units of digital asset A for 18 units of digital asset B.

(B) *Analysis.* The withholding of 1 unit of digital asset A is a disposition of a digital asset for services within the meaning of paragraph (b)(1)(ii) of this section. Under paragraph (b)(2)(i) of this section, TP has digital asset transaction costs of \$2. Under paragraph (b)(2)(ii)(A) of this section, TP must allocate such costs to the disposition of the 10 units of digital asset A. Under paragraphs (b)(1)(i) and (b)(3) of this section, TP's amount realized on the 10 units of digital asset A is \$18, which is the excess of the fair market value of the 18 units of digital asset B received (\$18) and the fair market value of services received (\$2) as of the date and time of the transaction over the allocated digital asset transaction costs (\$2). TP recognizes a gain on the 10 units of digital asset A transferred of \$13 (\$18 amount realized reduced by \$5 adjusted basis in the 10 units).

(v) *Example 5: Digital asset transaction fees withheld from the acquired digital assets in an exchange of digital assets—(A) Facts.* The facts are the same as in paragraph (b)(5)(iv)(A) of this section (the facts in *Example 4*), except that BEX requires its payment be withheld from the units of the digital asset acquired. At the time of the transaction, BEX withholds 3 units of digital asset B, 2 units of which effect the exchange of digital asset A for digital asset B and 1 unit of which effects the disposition of digital asset B for payment of the transaction fees. TP does not make an identification to BEX identifying other units of B as the units disposed.

(B) *Analysis.* The withholding of 3 units of digital asset B is a disposition of digital assets for services within the meaning of paragraph (b)(1)(ii) of this section. Under paragraph (b)(2)(i) of this section, TP has digital asset transaction costs of \$3. Under paragraph (b)(2)(ii)(B) of this section, TP must allocate such costs to the disposition of the 10 units of digital asset A in the original transaction. Under paragraphs (b)(1)(i) and (b)(3) of this section, TP's amount realized on the 10 units of digital asset A is \$17, which is the excess

of the fair market value of the 20 units of digital asset B received (\$20) as of the date and time of the transaction over the allocated digital asset transaction costs (\$3). TP's amount realized on the disposition of the 3 units of digital asset B used to pay digital asset transaction costs is \$3, which is the fair market value of services received at the time of the transaction. TP recognizes a gain on the 10 units of digital asset A transferred of \$12 (\$17 amount realized reduced by \$5 adjusted basis in the 10 units). TP recognizes \$0 in gain or loss on the 3 units of digital asset B withheld (\$3 amount realized reduced by \$3 (adjusted basis in the 3 units)). See § 1.1012–1(j)(3)(iii) for the special rule for identifying the basis and holding period of the 3 units withheld.

(c) *Applicability date.* This section applies to all sales, exchanges, and dispositions of digital assets on or after January 1, 2025.

■ **Par. 4.** Section 1.1012–1 is amended by adding paragraphs (h) through (j) to read as follows:

§ 1.1012–1 Basis of property.

* * * * *

(h) *Determination of basis of digital assets—(1) Overview and general rule.* This paragraph (h) provides rules to determine the basis of digital assets, as defined in § 1.6045–1(a)(19) other than a digital asset not required to be reported as a digital asset pursuant to § 1.6045–1(c)(8)(ii), (iii), or (iv), received in a purchase for cash, a transfer in connection with the performance of services, an exchange for digital assets or other property differing materially in kind or in extent, an exchange for a debt instrument described in paragraph (h)(1)(v) of this section, or in a part sale and part gift transfer described in paragraph (h)(1)(vi) of this section. Except as provided in paragraph (h)(1)(ii), (v), and (vi) of this section, the basis of digital assets received in a purchase or exchange is generally equal to the cost thereof at the date and time of the purchase or exchange, plus any allocable digital asset transaction costs as determined under paragraph (h)(2)(ii) of this section.

(i) *Basis of digital assets purchased for cash.* The basis of digital assets purchased for cash is the amount of cash used to purchase the digital assets plus any allocable digital asset transaction costs as determined under paragraph (h)(2)(ii)(A) of this section.

(ii) *Basis of digital assets received in connection with the performance of services.* For rules regarding digital assets received in connection with the performance of services, see §§ 1.61–2(d)(2) and 1.83–4(b).

(iii) *Basis of digital assets received in exchange for property other than digital assets.* The basis of digital assets

received in exchange for property differing materially in kind or in extent, other than digital assets or debt instruments described in paragraph (h)(1)(v) of this section, is the cost as described in paragraph (h)(3) of this section of the digital assets received plus any allocable digital asset transaction costs as determined under paragraph (h)(2)(ii)(A) of this section.

(iv) *Basis of digital assets received in exchange for other digital assets.* The basis of digital assets received in an exchange for other digital assets differing materially in kind or in extent is the cost as described in paragraph (h)(3) of this section of the digital assets received.

(v) *Basis of digital assets received in exchange for the issuance of a debt instrument.* If a debt instrument is issued in exchange for digital assets, the cost of the digital assets attributable to the debt instrument is the amount determined under paragraph (g) of this section, plus any allocable digital asset transaction costs as determined under paragraph (h)(2)(ii)(A) of this section.

(vi) *Basis of digital assets received in a part sale and part gift transfer.* To the extent digital assets are received in a transfer, which is in part a sale and in part a gift, see § 1.1012–2.

(2) *Digital asset transaction costs—(i) Definition.* The term *digital asset transaction costs* under this paragraph (h) has the same meaning as in § 1.1001–7(b)(2)(i).

(ii) *Allocation of digital asset transaction costs.* This paragraph (h)(2)(ii) provides the rules for allocating digital asset transaction costs, as defined in paragraph (h)(2)(i) of this section, for transactions described in paragraph (h)(1) of this section. Any other allocation or specific assignment of digital asset transaction costs is disregarded.

(A) *Allocation of digital asset transaction costs on a purchase or exchange for digital assets.* Except as provided in paragraphs (h)(2)(ii)(B) and (C) of this section, the total digital asset transaction costs paid by the taxpayer in connection with an acquisition of digital assets are allocable to the digital assets received.

(B) *Special rule for the allocation of digital asset transaction costs paid to effect an exchange of digital assets for other digital assets.* Except as provided in paragraph (h)(2)(ii)(C) of this section, the total digital asset transaction costs paid by the taxpayer, to effect an exchange described in paragraph (h)(1)(iv) of this section are allocable exclusively to the disposition of the transferred digital assets.

(C) *Special rule for allocating certain cascading digital asset transaction costs.* This paragraph (h)(2)(ii)(C) provides a special rule for an exchange described in paragraph (h)(1)(iv) of this section (original transaction) and for which digital assets are withheld from digital assets acquired in the original transaction to pay the digital asset transaction costs to effect the original transaction. The total digital asset transaction costs paid by the taxpayer, to effect both the original transaction and any disposition of the withheld digital assets, are allocable exclusively to the disposition of digital assets in the original transaction.

(3) *Determining the cost of the digital assets received.* In the case of an exchange described in either paragraph (h)(1)(iii) or (iv) of this section, the cost of the digital assets received is the same as the fair market value used in determining the amount realized on the sale or disposition of the transferred property for purposes of section 1001 of the Code. Generally, the cost of a digital asset received is determined at the date and time of the exchange. The special rule in § 1.1001-7(b)(4) also applies in this section for purposes of determining the fair market value of a received digital asset when it cannot be determined with reasonable accuracy.

(4) *Examples.* The following examples illustrate the application of paragraphs (h)(1) through (3) of this section. Unless the facts specifically state otherwise, the transactions described in the following examples occur after the applicability date set forth in paragraph (h)(5) of this section. For purposes of the examples under this paragraph (h)(4), assume that TP is a digital asset investor, and that digital assets A, B, and C are materially different in kind or in extent from each other. See § 1.1001-7(b)(5) for examples illustrating the determination of the amount realized and gain or loss in a sale or disposition of a digital asset for cash, other property differing materially in kind or in extent, or services.

(i) *Example 1: Transaction fee paid in cash—(A) Facts.* TP uses BEX, an unrelated third party, to exchange 10 units of digital asset A for 20 units of digital asset B. At the time of the exchange, a unit of digital asset A has a fair market value of \$2, and a unit of digital asset B has a fair market value of \$1. BEX charges TP a transaction fee of \$2, which TP pays to BEX in cash at the time of the exchange.

(B) *Analysis.* Under paragraph (h)(2)(i) of this section, TP has digital asset transaction costs of \$2. Under paragraph (h)(2)(ii)(B) of this section, TP allocates the digital asset transaction costs (\$2) to the disposition of the 10 units of digital asset A. Under paragraphs (h)(1)(iv) and (h)(3) of this section, TP's basis in the 20 units of digital asset B received is

\$20, which is the sum of the fair market value of the 20 units of digital asset B received (\$20).

(ii) *Example 2: Transaction fee paid in other property—(A) Facts.* The facts are the same as in paragraph (h)(4)(i)(A) of this section (the facts in *Example 1*), except that BEX requires its customers to pay transaction fees using units of digital asset C. TP pays the transaction fees using 2 units of digital asset C that TP holds. At the time TP pays the transaction fees, each unit of digital asset C has a fair market value of \$1. TP acquires 20 units of digital asset B with a fair market value of \$20 in the exchange.

(B) *Analysis.* Under paragraph (h)(2)(i) of this section, TP has digital asset transaction costs of \$2. Under paragraph (h)(2)(ii)(B) of this section, TP must allocate the digital asset transaction costs (\$2) to the disposition of the 10 units of digital asset A. Under paragraphs (h)(1)(iv) and (h)(3) of this section, TP's basis in the 20 units of digital asset B is \$20, which is the sum of the fair market value of the 20 units of digital asset B received (\$20).

(iii) *Example 3: Digital asset transaction costs withheld from the transferred digital assets—(A) Facts.* The facts are the same as in paragraph (h)(4)(i)(A) of this section (the facts in *Example 1*), except that BEX withholds 1 unit of digital asset A in payment of the transaction fees and TP receives 18 units of digital asset B.

(B) *Analysis.* Under paragraph (h)(2)(i) of this section, TP has digital asset transaction costs of \$2. Under paragraph (h)(2)(ii)(B) of this section, TP must allocate the digital asset transaction costs (\$2) to the disposition of the 10 units of digital asset A. Under paragraphs (h)(1)(iv) and (h)(3) of this section, TP's total basis in the digital asset B units is \$18, which is the sum of the fair market value of the 18 units of digital asset B received (\$18).

(5) *Applicability date.* This paragraph (h) is applicable to all acquisitions and dispositions of digital assets on or after January 1, 2025.

(i) [Reserved]

(j) *Sale, disposition, or transfer of digital assets.* Paragraphs (j)(1) and (2) of this section apply to digital assets not held in the custody of a broker, such as digital assets that are held in an unhosted wallet. Paragraph (j)(3) of this section applies to digital assets held in the custody of a broker. For the definitions of the terms *wallet*, *hosted wallet*, *unhosted wallet*, and *held in a wallet or account*, as used in this paragraph (j), see § 1.6045-1(a)(25)(i) through (iv). For the definition of the term *broker*, see § 1.6045-1(a)(1). For the definition of the term *digital asset*, see § 1.6045-1(a)(19); however, a digital asset not required to be reported as a digital asset pursuant to § 1.6045-1(c)(8)(ii), (iii), or (iv) is not subject to the rules of this section.

(1) *Digital assets not held in the custody of a broker.* If a taxpayer sells, disposes of, or transfers less than all units of the same digital asset not held in the custody of the broker, such as in

a single unhosted wallet or in a hosted wallet provided by a person other than a broker, the basis and holding period of the units sold, disposed of, or transferred are determined by making a specific identification of the units in the wallet that are sold, disposed of, or transferred, as provided in paragraph (j)(2) of this section. If a specific identification is not made, the basis and holding period of the units sold, disposed of, or transferred are determined by treating the units not held in the custody of a broker as sold, disposed of, or transferred in order of time from the earliest date on which units of the same digital asset not held in the custody of a broker were acquired by the taxpayer. For purposes of the preceding sentence, the date any units were transferred into the taxpayer's wallet is disregarded.

(2) *Specific identification of digital assets not held in the custody of a broker.* A specific identification of the units of a digital asset sold, disposed of, or transferred is made if, no later than the date and time of the sale, disposition, or transfer, the taxpayer identifies on its books and records the particular units to be sold, disposed of, or transferred by reference to any identifier, such as purchase date and time or the purchase price for the unit, that is sufficient to identify the units sold, disposed of, or transferred. A specific identification can be made only if adequate records are maintained for the unit of a specific digital asset not held in the custody of a broker to establish that a unit sold, disposed of, or transferred is removed from the wallet.

(3) *Digital assets held in the custody of a broker.* This paragraph (j)(3) applies to digital assets held in the custody of a broker.

(i) *Unit of a digital asset sold, disposed of, or transferred.* Except as provided in paragraph (j)(3)(iii) of this section, where multiple units of the same digital asset are held in the custody of a broker, as defined in § 1.6045-1(a)(1), and the taxpayer does not provide the broker with an adequate identification of which units are sold, disposed of, or transferred by the date and time of the sale, disposition, or transfer, as provided in paragraph (j)(3)(ii) of this section, the basis and holding period of the units sold, disposed of, or transferred are determined by treating the units held in the custody of the broker as sold, disposed of, or transferred in order of time from the earliest date on which units of the same digital asset held in the custody of a broker were acquired by the taxpayer. For purposes of the

preceding sentence, the date any units were transferred into the custody of the broker is disregarded.

(ii) *Adequate identification of units held in the custody of a broker.* Except as provided in paragraph (j)(3)(iii) of this section, where multiple units of the same digital asset are held in the custody of a broker, as defined in § 1.6045–1(a)(1), an adequate identification occurs if, no later than the date and time of the sale, disposition, or transfer, the taxpayer specifies to the broker having custody of the digital assets the particular units of the digital asset to be sold, disposed of, or transferred by reference to any identifier, such as purchase date and time or purchase price, that the broker designates as sufficiently specific to identify the units sold, disposed of, or transferred. The taxpayer is responsible for maintaining records to substantiate the identification. A standing order or instruction for the specific identification of digital assets is treated as an adequate identification made at the time of sale, disposition, or transfer. In addition, a taxpayer's election to use average basis for a covered security for which average basis reporting is permitted and that is also a digital asset is also an adequate identification. In the case of a broker offering only one method of making a specific identification, such method is treated as a standing order or instruction.

(iii) *Special rule for the identification of certain units withheld.* Notwithstanding paragraph (j)(3)(i) or (ii) of this section, in the case of a transaction described in paragraph (h)(1)(iv) of this section (digital assets exchanged for different digital assets) and for which the broker withholds units of the same digital asset received for either the broker's backup withholding obligations under section 3406 of the Code, or for payment of services described in § 1.1001–7(b)(1)(ii) (digital asset transaction costs), the taxpayer is deemed to have made an adequate identification, within the meaning of paragraph (j)(3)(ii) of this section, for such withheld units regardless of any other adequate identification within the meaning of paragraph (j)(3)(ii) of this section designating other units of the same digital asset as the units sold, disposed of, or transferred.

(4) *Method for specifically identifying units of a digital asset.* A method of specifically identifying the units of a digital asset sold, disposed of, or transferred under this paragraph (j), for example, by the earliest acquired, the latest acquired, or the highest basis, is not a method of accounting. Therefore,

a change in the method of specifically identifying the digital asset sold, disposed of, or transferred, for example, from the earliest acquired to the latest acquired, is not a change in method of accounting to which sections 446 and 481 of the Code apply.

(5) *Examples.* The following examples illustrate the application of paragraphs (j)(1) through (j)(3) of this section. Unless the facts specifically state otherwise, the transactions described in the following examples occur after the applicability date set forth in paragraph (j)(6) of this section. For purposes of the examples under this paragraph (j)(5), assume that TP is a digital asset investor and that the units of digital assets in the examples are the only digital assets owned by TP.

(i) *Example 1: Identification of digital assets not held in the custody of a broker—(A) Facts.* On September 1, Year 2, TP transfers two lots of digital asset DE to a new digital asset address generated and controlled by an unhosted wallet, as defined in § 1.6045–1(a)(25)(iii). The first lot transferred into TP's wallet consists of 10 units of digital asset DE, with a purchase date of January 1, Year 1, and a basis of \$2 per unit. The second lot transferred into TP's wallet consists of 20 units of digital asset DE, with a purchase date of January 1, Year 2, and a basis of \$5 per unit. On September 2, Year 2, when the DE units have a fair market value of \$10 per unit, TP purchases \$100 worth of consumer goods from Merchant M. To make payment, TP transfers 10 units of digital asset DE from TP's wallet to CPP, a processor of digital asset payments as defined in § 1.6045–1(a)(22), that then pays \$100 to M, in a transaction treated as a sale by TP of the 10 units of digital asset DE. Prior to making the transfer to CPP, TP keeps a record that the 10 units of DE sold in this transaction were from the second lot of units transferred into TP's wallet.

(B) *Analysis.* Under the facts in paragraph (j)(5)(i)(A) of this section, TP's notation in its records on the date of sale, prior to the time of the sale, specifying that the 10 units sold were from the 20 units TP acquired on January 1, Year 2, is a specific identification within the meaning of paragraph (j)(2) of this section. TP's notation is sufficient to identify the 10 units of digital asset DE sold. Accordingly, TP has identified the units disposed of for purposes of determining the basis (\$5 per unit) and holding period (one year or less) of the units sold in order to purchase the merchandise.

(ii) *Example 2: Identification of digital assets not held in the custody of a broker—(A) Facts.* The facts are the same as in paragraph (j)(5)(i)(A) of this section (the facts in Example 1), except in making the transfer to CPP, TP did not keep a record at or prior to the time of the sale of the specific 10 units of digital asset DE that TP intended to sell.

(B) *Analysis.* TP did not make a specific identification within the meaning of paragraph (j)(2) of this section for the 10 units of digital asset DE that were sold. Pursuant to the ordering rule provided in

paragraph (j)(1) of this section, the units disposed of are determined by treating the units held in the unhosted wallet as disposed of in order of time from the earliest date on which units of the same digital asset held in the unhosted wallet were acquired by the taxpayer. Accordingly, TP must treat the 10 units sold as the 10 units with a purchase date of January 1, Year 1, and a basis of \$2 per unit, transferred into the wallet.

(iii) *Example 3: Identification of digital assets held in the custody of a broker—(A) Facts.* On August 1, Year 1, TP opens a custodial account at CRX, a broker within the meaning of § 1.6045–1(a)(1), and purchases through CRX 10 units of digital asset DE for \$9 per unit. On January 1, Year 2, TP opens a custodial account at BEX, an unrelated broker, and purchases through BEX 20 units of digital asset DE for \$5 per unit. On August 1, Year 3, TP transfers the digital assets TP holds with CRX into TP's custodial account with BEX. BEX has a policy that purchase or transfer date and time, if necessary, is a sufficiently specific identifier for customers to determine the units sold, disposed of, or transferred. On September 1, Year 3, TP directs BEX to sell 10 units of digital asset DE for \$10 per unit and specifies that BEX sell the units that were purchased on January 1, Year 2. BEX effects the sale.

(B) *Analysis.* No later than the date and time of the sale, TP specified to BEX the particular units of digital assets to be sold. Accordingly, under paragraph (j)(3)(ii) of this section, TP provided an adequate identification of the 10 units of digital asset DE sold. Accordingly, the 10 units of digital asset DE that TP sold are the 10 units that TP purchased on January 1, Year 2.

(iv) *Example 4: Identification of digital assets held in the custody of a broker—(A) Facts.* The facts are the same as in paragraph (j)(5)(iii)(A) of this section (the facts in Example 3) except that TP directs BEX to sell 10 units of digital asset DE but does not make any identification of which units to sell. Additionally, TP does not provide purchase date information to BEX with respect to the units transferred into TP's account with BEX.

(B) *Analysis.* Because TP did not specify to BEX no later than the date and time of the sale the particular units of digital assets to be sold, TP did not make an adequate identification within the meaning of paragraph (j)(3)(ii) of this section. Thus, the ordering rule provided in paragraph (j)(3)(i) of this section applies to determine the units of digital asset DE sold. Pursuant to this rule, the units sold must be determined by treating the units held in the custody of the broker as disposed of in order of time from the earliest date on which units of the same digital asset held in the custody of a broker were acquired by the taxpayer. The 10 units of digital asset DE sold must be attributed to the 10 units of digital asset DE acquired on August 1, Year 1, which are the earliest units of digital asset DE acquired by TP that are held in TP's account with BEX. In addition, because TP did not provide to BEX customer-provided acquisition information as defined in § 1.6045–1(d)(2)(ii)(B)(4) with respect to the units transferred into TP's account with BEX (or adopt a standing order to follow the ordering rule applicable to BEX under

§ 1.6045–1(d)(2)(ii)(B)(2)), the units determined as sold by BEX under § 1.6045–1(d)(2)(ii)(B)(1) and that BEX will report as sold under § 1.6045–1 are not the same units that TP must treat as sold under this section. See § 1.6045–1(d)(2)(vii)(C) (*Example 3*).

(v) *Example 5: Identification of the digital asset used to pay certain digital asset transaction costs*—(A) *Facts*. On January 1, Year 1, TP purchases 10 units of digital asset AB and 30 units of digital asset CD in a custodial account with DRX, a broker within the meaning of § 1.6045–1(a)(1). DRX has a policy that purchase or transfer date and time, if necessary, is a sufficiently specific identifier by which its customers may identify the units sold, disposed of, or transferred. On June 30, Year 2, TP directs DRX to purchase 10 additional units of digital asset AB with 10 units of digital asset CD. DRX withholds one unit of the digital asset AB received for transaction fees. TP does not make any identification of the 1 unit of digital asset AB withheld by DRX. TP engages in no other transactions.

(B) *Analysis*. DRX's withholding of 1 unit of digital asset AB from the 10 units acquired by TP is a disposition by TP of the 1 unit as of June 30, Year 2. See §§ 1.1001–7 and 1.1012–1(h) for determining the amount realized and basis of the disposed unit, respectively. Despite TP not making an adequate identification, within the meaning of paragraph (j)(3)(ii) of this section to DRX of the 1 unit withheld, under the special rule of paragraph (j)(3)(iii) of this section, the withheld unit of AB must be attributed to the units of AB acquired on June 30, Year 2 and held in TP's account with DRX.

(vi) *Example 6: Identification of the digital asset used to pay certain digital asset transaction costs*—(A) *Facts*. The facts are the same as in paragraph (j)(5)(v)(A) of this section (the facts in *Example 5*) except that TP has a standing order with BEX to treat the earliest unit purchased in TP's account as the unit sold, disposed of, or transferred.

(B) *Analysis*. The transaction is an exchange of digital assets for different digital assets and for which the broker withholds units of the same digital asset received in order to pay digital asset transaction costs. Accordingly, although TP's standing order to treat the earliest unit purchased in TP's account (that is, the units purchased by TP on January 1, Year 1) as the units sold is an adequate identification under paragraph (j)(3)(ii) of this section, TP is deemed to have made an adequate identification for such withheld units pursuant to paragraph (j)(3)(iii) of this section regardless of TP's adequate identification designating other units as the units sold. Thus, the results are the same as provided in paragraph (j)(5)(v)(B) of this section (the analysis in *Example 5*).

(6) *Applicability date*. This paragraph (j) is applicable to all acquisitions and dispositions of digital assets on or after January 1, 2025.

■ **Par. 5.** Section 1.6045–0 is added to read as follows:

§ 1.6045–0 Table of contents.

In order to facilitate the use of § 1.6045–1, this section lists the paragraphs contained in § 1.6045–1.

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(i) In general.

(ii) Adjustments for wash sales.

(A) Securities in the same account or wallet.

(1) In general.

(2) Special rules for covered securities that are also digital assets.

(B) Covered securities in different accounts or wallets.

(C) Effect of election under section 475(f)(1).

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■ **Par. 6.** Section 1.6045-1 is amended by:

■ 1. Revising and republishing paragraphs (a), (b), (c)(3) and (4), and (c)(5)(i);

■ 2. Adding paragraph (c)(8);

■ 3. Revising and republishing paragraph (d)(2) and revising paragraphs (d)(4) and (5);

■ 4. Revising and republishing paragraphs (d)(6)(i) and (ii), (d)(6)(iii)(A) and (B), and (d)(6)(v);

■ 5. Adding paragraph (d)(6)(x);

■ 6. Revising and republishing paragraphs (d)(7)(i), (d)(7)(ii)(A) and (B), and (d)(9);

■ 7. Adding paragraphs (d)(10) and (11) and (e)(2)(iii);

■ 8. Revising and republishing paragraph (g);

■ 9. Revising paragraphs (j) and (m)(1);

■ 10. Adding paragraph (m)(2)(ii)(C);

■ 11. Revising and republishing paragraphs (n)(6)(i) and (q); and

■ 12. Adding paragraph (r).

The revisions, republications, and additions read as follows:

§ 1.6045-1 Returns of information of brokers and barter exchanges.

(a) *Definitions.* The following definitions apply for purposes of this section and §§ 1.6045-2 and 1.6045-4.

(1) *Broker.* The term *broker* means any person (other than a person who is required to report a transaction under section 6043 of the Code), U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be

made by others. A broker includes an obligor that regularly issues and retires its own debt obligations, a corporation that regularly redeems its own stock, or a person that regularly offers to redeem digital assets that were created or issued by that person. A broker also includes a real estate reporting person under § 1.6045-4(e) who (without regard to any exceptions provided by § 1.6045-4(c) and (d)) would be required to make an information return with respect to a real estate transaction under § 1.6045-4(a). However, with respect to a sale (including a redemption or retirement) effected at an office outside the United States under paragraph (g)(3)(iii) of this section (relating to sales other than sales of digital assets), a broker includes only a person described as a U.S. payor or U.S. middleman in § 1.6049-5(c)(5). In the case of a sale of a digital asset, a broker includes only a U.S. digital asset broker as defined in paragraph (g)(4)(i)(A)(1) of this section. In addition, a broker does not include an international organization described in § 1.6049-4(c)(1)(ii)(G) that redeems or retires an obligation of which it is the issuer.

(2) *Customer*—(i) *In general.* The term *customer* means, with respect to a sale effected by a broker, the person (other than such broker) that makes the sale, if the broker acts as—

(A) An agent for such person in the sale;

(B) A principal in the sale;

(C) The participant in the sale responsible for paying to such person or crediting to such person's account the gross proceeds on the sale; or

(D) A digital asset middleman, as defined in paragraph (a)(21) of this section, that effects the sale of a digital asset for such person.

(ii) *Special rules for payment transactions involving digital assets.* In addition to the persons defined as customers in paragraph (a)(2)(i) of this section, the term *customer* includes:

(A) The person who transfers digital assets in a sale described in paragraph (a)(9)(ii)(D) of this section to a processor of digital asset payments that has an agreement or other arrangement with such person for the provision of digital asset payment services that provides that the processor of digital asset payments may verify such person's identity or otherwise comply with anti-money laundering (AML) program requirements under 31 CFR part 1010, or any other AML program requirements, as are applicable to that processor of digital asset payments. For purposes of the previous sentence, an agreement or other arrangement includes any arrangement under which,

as part of customary onboarding procedures, such person is treated as having agreed to general terms and conditions.

(B) The person who transfers digital assets or directs the transfer of digital assets—

(1) In exchange for property of a type the later sale of which, if effected by such broker, would constitute a sale of that property under paragraph (a)(9) of this section; or

(2) In exchange for the acquisition of services performed by such broker; and

(C) In the case of a real estate reporting person under § 1.6045–4(e) with respect to a real estate transaction as defined in § 1.6045–4(b)(1), the person who transfers digital assets or directs the transfer of digital assets to the transferor of real estate (or the seller's nominee or agent) to acquire such real estate.

(3) *Security*. The term *security* means:

(i) A share of stock in a corporation (foreign or domestic);

(ii) An interest in a trust;

(iii) An interest in a partnership;

(iv) A debt obligation;

(v) An interest in or right to purchase any of the foregoing in connection with the issuance thereof from the issuer or an agent of the issuer or from an underwriter that purchases any of the foregoing from the issuer;

(vi) An interest in a security described in paragraph (a)(3)(i) or (iv) of this section (but not including executory contracts that require delivery of such type of security);

(vii) An option described in paragraph (m)(2) of this section; or

(viii) A securities futures contract.

(4) *Barter exchange*. The term *barter exchange* means any person with members or clients that contract either with each other or with such person to trade or barter property or services either directly or through such person. The term does not include arrangements that provide solely for the informal exchange of similar services on a noncommercial basis.

(5) *Commodity*. The term *commodity* means:

(i) Any type of personal property or an interest therein (other than securities as defined in paragraph (a)(3) of this section), the trading of regulated futures contracts in which has been approved by or has been certified to the Commodity Futures Trading Commission (see 17 CFR 40.3 or 40.2);

(ii) Lead, palm oil, rapeseed, tea, tin, or an interest in any of the foregoing; or

(iii) Any other personal property or an interest therein that is of a type the Secretary determines is to be treated as a *commodity* under this section, from

and after the date specified in a notice of such determination published in the **Federal Register**.

(6) *Regulated futures contract*. The term *regulated futures contract* means a regulated futures contract within the meaning of section 1256(b) of the Code.

(7) *Forward contract*. The term *forward contract* means:

(i) An executory contract that requires delivery of a commodity in exchange for cash and which contract is not a regulated futures contract;

(ii) An executory contract that requires delivery of personal property or an interest therein in exchange for cash, or a cash settlement contract, if such executory contract or cash settlement contract is of a type the Secretary determines is to be treated as a *forward contract* under this section, from and after the date specified in a notice of such determination published in the **Federal Register**; or

(iii) An executory contract that—

(A) Requires delivery of a digital asset in exchange for cash, stored-value cards, a different digital asset, or any other property or services described in paragraph (a)(9)(ii)(B) or (C) of this section; and

(B) Is not a regulated futures contract.

(8) *Closing transaction*. The term *closing transaction* means a lapse, expiration, settlement, abandonment, or other termination of a position. For purposes of the preceding sentence, a position includes a right or an obligation under a forward contract, a regulated futures contract, a securities futures contract, or an option.

(9) *Sale*—(i) *In general*. The term *sale* means any disposition of securities, commodities, options, regulated futures contracts, securities futures contracts, or forward contracts, and includes redemptions of stock, retirements of debt instruments (including a partial retirement attributable to a principal payment received on or after January 1, 2014), and enterings into short sales, but only to the extent any of these actions are conducted for cash. In the case of an option, a regulated futures contract, a securities futures contract, or a forward contract, a sale includes any closing transaction. When a closing transaction for a contract described in section 1256(b)(1)(A) involves making or taking delivery, there are two sales, one resulting in profit or loss on the contract, and a separate sale on the delivery. When a closing transaction for a contract described in section 988(c)(5) of the Code involves making delivery, there are two sales, one resulting in profit or loss on the contract, and a separate sale on the delivery. For purposes of the preceding sentence, a

broker may assume that any customer's functional currency is the U.S. dollar. When a closing transaction in a forward contract involves making or taking delivery, the broker may treat the delivery as a sale without separating the profit or loss on the contract from the profit or loss on the delivery, except that taking delivery for U.S. dollars is not a sale. The term *sale* does not include entering into a contract that requires delivery of personal property or an interest therein, the initial grant or purchase of an option, or the exercise of a purchased call option for physical delivery (except for a contract described in section 988(c)(5)). For purposes of this section only, a constructive sale under section 1259 of the Code and a mark to fair market value under section 475 or 1296 of the Code are not sales.

(ii) *Sales with respect to digital assets*—(A) *In general*. In addition to the specific rules provided in paragraphs (a)(9)(ii)(B) through (D) of this section, the term *sale* also includes:

(1) Any disposition of a digital asset in exchange for cash or stored-value cards;

(2) Any disposition of a digital asset in exchange for a different digital asset; and

(3) The delivery of a digital asset pursuant to the settlement of a forward contract, option, regulated futures contract, any similar instrument, or any other executory contract which would be treated as a sale of a digital asset under this paragraph (a)(9)(ii) if the contract had not been executory. In the case of a transaction involving a contract described in the previous sentence, see paragraph (a)(9)(i) of this section for rules applicable to determining whether a sale has occurred and how to report the making or taking delivery of the underlying asset.

(B) *Dispositions of digital assets for certain property*. Solely in the case of a broker that is a real estate reporting person defined in § 1.6045–4(e) with respect to real property or is in the business of effecting sales of property for others, which sales when effected would constitute sales under paragraph (a)(9)(i) of this section, the term *sale* also includes any disposition of a digital asset in exchange for such property.

(C) *Dispositions of digital assets for certain services*. The term *sale* also includes any disposition of a digital asset in consideration for any services provided by a broker that is a real estate reporting person defined in § 1.6045–4(e) with respect to real property or a broker that is in the business of effecting sales of property described in paragraph (a)(9)(i), paragraphs (a)(9)(ii)(A) and (B), or paragraph (a)(9)(ii)(D) of this section.

(D) *Special rule for certain sales effected by processors of digital asset payments.* In the case of a processor of digital asset payments as defined in paragraph (a)(22) of this section, the term *sale* also includes the payment by one party of a digital asset to a processor of digital asset payments in return for the payment of that digital asset, cash, or a different digital asset to a second party. If any sale of digital assets described in this paragraph (a)(9)(ii)(D) would also be subject to reporting under one of the definitions of sale described in paragraphs (a)(9)(ii)(A) through (C) of this section as a sale effected by a broker other than as a processor of digital asset payments, the broker must treat the sale solely as a sale under such other paragraph and not as a sale under this paragraph (a)(9)(ii)(D).

(10) *Effect—(i) In general.* The term *effect* means, with respect to a sale, to act as—

(A) An agent for a party in the sale wherein the nature of the agency is such that the agent ordinarily would know the gross proceeds from the sale;

(B) In the case of a broker described in the second sentence of paragraph (a)(1) of this section, a person that is an obligor retiring its own debt obligations, a corporation redeeming its own stock, or an issuer of digital assets redeeming those digital assets;

(C) A principal that is a dealer in such sale; or

(D) A digital asset middleman as defined in paragraph (a)(21) of this section for a party in a sale of digital assets.

(ii) *Actions relating to certain options and forward contracts.* For purposes of paragraph (a)(10)(i) of this section, acting as an agent, principal, or digital asset middleman with respect to grants or purchases of options, exercises of call options, or enterings into contracts that require delivery of personal property or an interest therein is not of itself effecting a sale. A broker that has on its books a forward contract under which delivery is made effects such delivery.

(11) *Foreign currency.* The term *foreign currency* means currency of a foreign country.

(12) *Cash.* The term *cash* means United States dollars or any convertible foreign currency that is issued by a government or a central bank, whether in physical or digital form.

(13) *Person.* The term *person* includes any governmental unit and any agency or instrumentality thereof.

(14) *Specified security.* The term *specified security* means:

(i) Any share of stock (or any interest treated as stock, including, for example, an American Depositary Receipt) in an

entity organized as, or treated for Federal tax purposes as, a corporation, either foreign or domestic (provided that, solely for purposes of this paragraph (a)(14)(i), a security classified as stock by the issuer is treated as stock, and if the issuer has not classified the security, the security is not treated as stock unless the broker knows that the security is reasonably classified as stock under general Federal tax principles);

(ii) Any debt instrument described in paragraph (a)(17) of this section, other than a debt instrument subject to section 1272(a)(6) of the Code (certain interests in or mortgages held by a real estate mortgage investment conduit (REMIC), certain other debt instruments with payments subject to acceleration, and pools of debt instruments the yield on which may be affected by prepayments) or a short-term obligation described in section 1272(a)(2)(C);

(iii) Any option described in paragraph (m)(2) of this section;

(iv) Any securities futures contract;

(v) Any digital asset as defined in paragraph (a)(19) of this section; or

(vi) Any forward contract described in paragraph (a)(7)(iii) of this section requiring the delivery of a digital asset.

(15) *Covered security.* The term *covered security* means a specified security described in this paragraph (a)(15).

(i) *In general.* Except as provided in paragraph (a)(15)(iv) of this section, the following specified securities are covered securities:

(A) A specified security described in paragraph (a)(14)(i) of this section acquired for cash in an account on or after January 1, 2011, except stock for which the average basis method is available under § 1.1012–1(e).

(B) Stock for which the average basis method is available under § 1.1012–1(e) acquired for cash in an account on or after January 1, 2012.

(C) A specified security described in paragraphs (a)(14)(ii) and (n)(2)(i) of this section (not including the debt instruments described in paragraph (n)(2)(ii) of this section) acquired for cash in an account on or after January 1, 2014.

(D) A specified security described in paragraphs (a)(14)(ii) and (n)(3) of this section acquired for cash in an account on or after January 1, 2016.

(E) Except for an option described in paragraph (m)(2)(ii)(C) of this section (relating to an option on a digital asset), an option described in paragraph (a)(14)(iii) of this section granted or acquired for cash in an account on or after January 1, 2014.

(F) A securities futures contract described in paragraph (a)(14)(iv) of this

section entered into in an account on or after January 1, 2014.

(G) A specified security transferred to an account if the broker or other custodian of the account receives a transfer statement (as described in § 1.6045A–1) reporting the security as a covered security.

(H) An option on a digital asset described in paragraphs (a)(14)(iii) and (m)(2)(ii)(C) of this section (other than an option described in paragraph (a)(14)(v) of this section) granted or acquired in an account on or after January 1, 2026.

(I) [Reserved]

(J) A specified security described in paragraph (a)(14)(v) of this section that is acquired in a customer's account by a broker providing custodial services for such specified security on or after January 1, 2026, in exchange for cash, stored-value cards, different digital assets, or any other property or services described in paragraph (a)(9)(ii)(B) or (C) of this section, respectively.

(K) A specified security described in paragraph (a)(14)(vi) of this section, not described in paragraph (a)(14)(v) of this section, that is entered into or acquired in an account on or after January 1, 2026.

(ii) *Acquired in an account.* For purposes of this paragraph (a)(15), a security is considered acquired in a customer's account at a broker or custodian if the security is acquired by the customer's broker or custodian or acquired by another broker and delivered to the customer's broker or custodian. Acquiring a security in an account includes granting an option and entering into a forward contract or short sale.

(iii) *Corporate actions and other events.* For purposes of this paragraph (a)(15), a security acquired due to a stock dividend, stock split, reorganization, redemption, stock conversion, recapitalization, corporate division, or other similar action is considered acquired for cash in an account.

(iv) *Exceptions.* Notwithstanding paragraph (a)(15)(i) of this section, the following specified securities are not covered securities:

(A) Stock acquired in 2011 that is transferred to a dividend reinvestment plan (as described in § 1.1012–1(e)(6)) in 2011. However, a covered security acquired in 2011 that is transferred to a dividend reinvestment plan after 2011 remains a covered security.

(B) A specified security, other than a specified security described in paragraph (a)(14)(v) or (vi) of this section, acquired through an event described in paragraph (a)(15)(iii) of this

section if the basis of the acquired security is determined from the basis of a noncovered security.

(C) A specified security that is excepted at the time of its acquisition from reporting under paragraph (c)(3) or (g) of this section. However, a broker cannot treat a specified security as acquired by an exempt foreign person under paragraph (g)(1)(i) or paragraphs (g)(4)(ii) through (v) of this section at the time of acquisition if, at that time, the broker knows or should have known (including by reason of information that the broker is required to collect under section 1471 or 1472 of the Code) that the customer is not a foreign person.

(D) A security for which reporting under this section is required by § 1.6049–5(d)(3)(ii) (certain securities owned by a foreign intermediary or flow-through entity).

(E) Digital assets in a sale required to be reported under paragraph (g)(4)(vi)(E) of this section by a broker making a payment of gross proceeds from the sale to a foreign intermediary, flow-through entity, or U.S. branch.

(16) *Noncovered security*. The term *noncovered security* means any specified security that is not a covered security.

(17) *Debt instrument, bond, debt obligation, and obligation*. For purposes of this section, the terms *debt instrument, bond, debt obligation, and obligation* mean a debt instrument as defined in § 1.1275–1(d) and any instrument or position that is treated as a debt instrument under a specific provision of the Code (for example, a regular interest in a REMIC as defined in section 860G(a)(1) of the Code and § 1.860G–1). Solely for purposes of this section, a security classified as debt by the issuer is treated as debt. If the issuer has not classified the security, the security is not treated as debt unless the broker knows that the security is reasonably classified as debt under general Federal tax principles or that the instrument or position is treated as a debt instrument under a specific provision of the Code.

(18) *Securities futures contract*. For purposes of this section, the term *securities futures contract* means a contract described in section 1234B(c) of the Code whose underlying asset is described in paragraph (a)(14)(i) of this section and which is entered into on or after January 1, 2014.

(19) *Digital asset*—(i) *In general*. For purposes of this section, the term *digital asset* means any digital representation of value that is recorded on a cryptographically secured distributed ledger (or any similar technology), without regard to whether each

individual transaction involving that digital asset is actually recorded on that ledger, and that is not cash as defined in paragraph (a)(12) of this section.

(ii) *No inference*. Nothing in this paragraph (a)(19) or elsewhere in this section may be construed to mean that a digital asset is or is not properly classified as a security, commodity, option, securities futures contract, regulated futures contract, or forward contract for any other purpose of the Code.

(20) *Digital asset address*. For purposes of this section, the term *digital asset address* means the unique set of alphanumeric characters, in some cases referred to as a quick response or QR Code, that is generated by the wallet into which the digital asset will be transferred.

(21) *Digital asset middleman*—(i) *In general*. The term *digital asset middleman* means any person who provides a facilitative service as described in paragraph (a)(21)(iii) of this section with respect to a sale of digital assets.

(ii) [Reserved]

(iii) *Facilitative service*. (A) [Reserved]

(B) *Special rule involving sales of digital assets under paragraphs (a)(9)(ii)(B) through (D) of this section*. A facilitative service means:

(1) The acceptance or processing of digital assets as payment for property of a type which when sold would constitute a sale under paragraph (a)(9)(i) of this section by a broker that is in the business of effecting sales of such property.

(2) Any service performed by a real estate reporting person as defined in § 1.6045–4(e) with respect to a real estate transaction in which digital assets are paid by the real estate buyer in full or partial consideration for the real estate, provided the real estate reporting person has actual knowledge or ordinarily would know that digital assets were used by the real estate buyer to make payment to the real estate seller. For purposes of this paragraph (a)(21)(iii)(B)(2), a real estate reporting person is considered to have actual knowledge that digital assets were used by the real estate buyer to make payment if the terms of the real estate contract provide for payment using digital assets.

(3) The acceptance or processing of digital assets as payment for any service provided by a broker described in paragraph (a)(1) of this section determined without regard to any sales under paragraph (a)(9)(ii)(C) of this section that are effected by such broker.

(4) Any payment service performed by a processor of digital asset payments

described in paragraph (a)(22) of this section, provided the processor of digital asset payments has actual knowledge or ordinarily would know the nature of the transaction and the gross proceeds therefrom.

(5) The acceptance of digital assets in return for cash, stored-value cards, or different digital assets, to the extent provided by a physical electronic terminal or kiosk.

(22) *Processor of digital asset payments*. For purposes of this section, the term *processor of digital asset payments* means a person who in the ordinary course of a trade or business stands ready to effect sales of digital assets as defined in paragraph (a)(9)(ii)(D) of this section by regularly facilitating payments from one party to a second party by receiving digital assets from the first party and paying those digital assets, cash, or different digital assets to the second party.

(23) *Stored-value card*. For purposes of this section, the term *stored-value card* means a card, including any gift card, with a prepaid value in U.S. dollars, any convertible foreign currency, or any digital asset, without regard to whether the card is in physical or digital form.

(24) *Transaction identification*. For purposes of this section, the term *transaction identification, or transaction ID*, means the unique set of alphanumeric identification characters that a digital asset distributed ledger associates with a transaction involving the transfer of a digital asset from one digital asset address to another. The term transaction ID includes terms such as a *TxID* or *transaction hash*.

(25) *Wallet, hosted wallet, unhosted wallet, and held in a wallet or account*—(i) *Wallet*. A *wallet* is a means of storing, electronically or otherwise, a user's private keys to digital assets held by or for the user.

(ii) *Hosted wallet*. A *hosted wallet* is a custodial service that electronically stores the private keys to digital assets held on behalf of others.

(iii) *Unhosted wallet*. An *unhosted wallet* is a non-custodial means of storing, electronically or otherwise, a user's private keys to digital assets held by or for the user. Unhosted wallets, sometimes referred to as self-hosted or self-custodial wallets, can be provided through software that is connected to the internet (a hot wallet) or through hardware or physical media that is disconnected from the internet (a cold wallet).

(iv) *Held in a wallet or account*. A digital asset is referred to in this section as *held in a wallet or account* if the wallet, whether hosted or unhosted, or

account stores the private keys necessary to transfer control of the digital asset. A digital asset associated with a digital asset address that is generated by a wallet, and a digital asset associated with a sub-ledger account of a wallet, are similarly referred to as held in a wallet. References to variations of held in a wallet or account, such as held at a broker, held with a broker, held by the user of a wallet, held on behalf of another, acquired in a wallet or account, or transferred into a wallet or account, each have a similar meaning.

(b) *Examples.* The following examples illustrate the definitions in paragraph (a) of this section.

(1) *Example 1.* The following persons generally are brokers within the meaning of paragraph (a)(1) of this section—

(i) A mutual fund, an underwriter of the mutual fund, or an agent for the mutual fund, any of which stands ready to redeem or repurchase shares in such mutual fund.

(ii) A professional custodian (such as a bank) that regularly arranges sales for custodial accounts pursuant to instructions from the owner of the property.

(iii) A depositary trust or other person who regularly acts as an escrow agent in corporate acquisitions, if the nature of the activities of the agent is such that the agent ordinarily would know the gross proceeds from sales.

(iv) A stock transfer agent for a corporation, which agent records transfers of stock in such corporation, if the nature of the activities of the agent is such that the agent ordinarily would know the gross proceeds from sales.

(v) A dividend reinvestment agent for a corporation that stands ready to purchase or redeem shares.

(vi) A person who in the ordinary course of a trade or business provides users with hosted wallet services to the extent such person stands ready to effect the sale of digital assets on behalf of its customers, including by acting as an agent for a party in the sale wherein the nature of the agency is as described in paragraph (a)(10)(i)(A) of this section.

(vii) A processor of digital asset payments as described in paragraph (a)(22) of this section.

(viii) A person who in the ordinary course of a trade or business either owns or operates one or more physical electronic terminals or kiosks that stand ready to effect the sale of digital assets for cash, stored-value cards, or different digital assets, regardless of whether the other person is the disposer or the acquirer of the digital assets in such an exchange.

(ix) [Reserved]

(x) A person who in the ordinary course of a trade or business stands ready at a physical location to effect sales of digital assets on behalf of others.

(xi) [Reserved]

(2) *Example 2.* The following persons are not brokers within the meaning of paragraph (a)(1) of this section in the absence of additional facts that indicate the person is a broker—

(i) A stock transfer agent for a corporation, which agent daily records transfers of stock in such corporation, if the nature of the activities of the agent is such that the agent ordinarily would not know the gross proceeds from sales.

(ii) A person (such as a stock exchange) that merely provides facilities in which others effect sales.

(iii) An escrow agent or nominee if such agency is not in the ordinary course of a trade or business.

(iv) An escrow agent, otherwise a broker, which agent effects no sales other than such transactions as are incidental to the purpose of the escrow (such as sales to collect on collateral).

(v) A floor broker on a commodities exchange, which broker maintains no records with respect to the terms of sales.

(vi) A corporation that issues and retires long-term debt on an irregular basis.

(vii) A clearing organization.

(viii) A merchant who is not otherwise required to make a return of information under section 6045 of the Code and who regularly sells goods or other property (other than digital assets) or services in return for digital assets.

(ix) A person solely engaged in the business of validating distributed ledger transactions, through proof-of-work, proof-of-stake, or any other similar consensus mechanism, without providing other functions or services.

(x) A person solely engaged in the business of selling hardware or licensing software, the sole function of which is to permit a person to control private keys which are used for accessing digital assets on a distributed ledger, without providing other functions or services.

(3) *Example 3: Barter exchange.* A, B, and C belong to a carpool in which they commute to and from work. Every third day, each member of the carpool provides transportation for the other two members. Because the carpool arrangement provides solely for the informal exchange of similar services on a noncommercial basis, the carpool is not a barter exchange within the meaning of paragraph (a)(4) of this section.

(4) *Example 4: Barter exchange.* X is an organization whose members include retail merchants, wholesale merchants, and persons in the trade or business of performing services. X's members exchange property and services among themselves using credits on the books of X as a medium of exchange. Each exchange through X is reflected on the books of X by crediting the account of the member providing property or services and debiting the account of the member receiving such property or services. X also provides information to its members concerning property and services available for exchange through X. X charges its members a commission on each transaction in which credits on its books are used as a medium of exchange. X is a barter exchange within the meaning of paragraph (a)(4) of this section.

(5) *Example 5: Commodity, forward contract.* A warehouse receipt is an interest in personal property for purposes of paragraph (a) of this section. Consequently, a

warehouse receipt for a quantity of lead is a commodity under paragraph (a)(5)(ii) of this section. Similarly, an executory contract that requires delivery of a warehouse receipt for a quantity of lead is a forward contract under paragraph (a)(7)(ii) of this section.

(6) *Example 6: Customer.* The only customers of a depositary trust acting as an escrow agent in corporate acquisitions, which trust is a broker, are shareholders to whom the trust makes payments or shareholders for whom the trust is acting as an agent.

(7) *Example 7: Customer.* The only customers of a stock transfer agent, which agent is a broker, are shareholders to whom the agent makes payments or shareholders for whom the agent is acting as an agent.

(8) *Example 8: Customer.* D, an individual not otherwise exempt from reporting, is the holder of an obligation issued by P, a corporation. R, a broker, acting as an agent for P, retires such obligation held by D. Such obligor payments from R represent obligor payments by P. D, the person to whom the gross proceeds are paid or credited by R, is the customer of R.

(9) *Example 9: Covered security.* E, an individual not otherwise exempt from reporting, maintains an account with S, a broker. On June 1, 2012, E instructs S to purchase stock that is a specified security for cash. S places an order to purchase the stock with T, another broker. E does not maintain an account with T. T executes the purchase. Custody of the purchased stock is transferred to E's account at S. Under paragraph (a)(15)(ii) of this section, the stock is considered acquired for cash in E's account at S. Because the stock is acquired on or after January 1, 2012, under paragraph (a)(15)(i) of this section, it is a covered security.

(10) *Example 10: Covered security.* F, an individual not otherwise exempt from reporting, is granted 100 shares of stock in F's employer by F's employer. Because F does not acquire the stock for cash or through a transfer to an account with a transfer statement (as described in § 1.6045A-1), under paragraph (a)(15) of this section, the stock is not a covered security.

(11) *Example 11: Covered security.* G, an individual not otherwise exempt from reporting, owns 400 shares of stock in Q, a corporation, in an account with U, a broker. Of the 400 shares, 100 are covered securities and 300 are noncovered securities. Q takes a corporate action to split its stock in a 2-for-1 split. After the stock split, G owns 800 shares of stock. Because the adjusted basis of 600 of the 800 shares that G owns is determined from the basis of noncovered securities, under paragraphs (a)(15)(iii) and (a)(15)(iv)(B) of this section, these 600 shares are not covered securities and the remaining 200 shares are covered securities.

(12) *Example 12: Processor of digital asset payments, sale, and customer—(i) Facts.* Company Z is an online merchant that accepts digital asset DE as a form of payment for the merchandise it sells. The merchandise Z sells does not include digital assets. Z does not provide any other service that could be considered as standing ready to effect sales of digital assets or any other property subject to reporting under section 6045. CPP is in the

business of facilitating payments made by users of digital assets to merchants with which CPP has an account. CPP also has contractual arrangements with users of digital assets for the provision of digital asset payment services that provide that CPP may verify such user's identity pursuant to AML program requirements. Z contracts with CPP to help Z's customers to make payments to Z using digital assets. Under Z's agreement with CPP, when purchasers of merchandise initiate payment on Z's website using DE, they are directed to CPP's website to complete the payment part of the transaction. CPP is a third party settlement organization, as defined in § 1.6050W-1(c)(2), with respect to the payments it makes to Z. Customer R seeks to purchase merchandise from Z that is priced at \$6,000 (which is 6,000 units of DE). After R initiates a purchase, R is directed to CPP's website where R is directed to enter into an agreement with CPP, which as part of CPP's customary onboarding procedures developed pursuant to AML program requirements, requires R to submit information to CPP to verify R's identity. Thereafter, R is instructed to transfer 6,000 units of DE to a digital asset address controlled by CPP. CPP then pays \$6,000 in cash to Z, who in turn processes R's order.

(ii) *Analysis.* CPP is a processor of digital asset payments within the meaning of paragraph (a)(22) of this section because CPP, in the ordinary course of its business, regularly effects sales of digital assets as defined in paragraph (a)(9)(ii)(D) of this section by receiving digital assets from one party and paying those digital assets, cash, or different digital assets to a second party. Based on CPP's contractual relationship with Z, CPP has actual knowledge that R's payment was a payment transaction and the amount of gross proceeds R received as a result. Accordingly, CPP's services are facilitative services under paragraph (a)(21)(iii)(B) of this section and CPP is acting as a digital asset middleman under paragraph (a)(21) of this section to effect R's sale of digital assets under paragraph (a)(10)(i)(D) of this section. R's payment of 6,000 units of DE to CPP in return for the payment of \$6,000 cash to Z is a sale of digital assets under paragraph (a)(9)(ii)(D) of this section. Additionally, because CPP has an arrangement with R for the provision of digital asset payment services that provides that CPP may verify R's identity pursuant to AML program requirements, R is CPP's customer under paragraph (a)(2)(ii)(A) of this section. Finally, CPP is also required to report the payment to Z under § 1.6050W-1(a) because the payment is a third party network transaction under § 1.6050W-1(c). The answer would be the same if CPP paid Z the 6,000 units of DE or another digital asset instead of cash.

(13) *Example 13: Broker.* The facts are the same as in paragraph (b)(12)(i) of this section (the facts in *Example 12*), except that Z accepts digital asset DE from its purchasers directly without the services of CPP or any other processor of digital asset payments. To pay for the merchandise R purchases on Z's website, R is directed by Z to transfer 15 units of DE directly to Z's digital asset address. Z is not a broker under the

definition of paragraph (a)(1) of this section because Z does not stand ready as part of its trade or business to effect sales as defined in paragraph (a)(9) of this section made by others. That is, the sales that Z is in the business of conducting are of property that is not subject to reporting under section 6045.

(14) *Example 14: Processor of digital asset payments—(i) Facts.* Customer S purchases goods that are not digital assets with 10 units of digital asset DE from Merchant M using a digital asset DE credit card issued by Bank BK. BK has a contractual arrangement with customers using BK's credit cards that provides that BK may verify such customer identification information pursuant to AML program requirements. In addition, as part of BK's customary onboarding procedures, BK requires credit card applicants to submit information to BK to verify their identity. M is one of a network of unrelated persons that has agreed to accept digital asset DE credit cards issued by BK as payment for purchase transactions under an agreement that provides standards and mechanisms for settling the transaction between a merchant acquiring bank and the persons who accept the cards. Bank MAB is the merchant acquiring entity with the contractual obligation to make payments to M for goods provided to S in this transaction. To make payment for S's purchase of goods from M, S transfers 10 units of digital asset DE to BK. BK pays the 10 units of DE, less its processing fee, to Bank MAB, which amount Bank MAB pays, less its processing fee, to M.

(ii) *Analysis.* BK is a processor of digital asset payments as defined in paragraph (a)(22) of this section because BK, in the ordinary course of its business, regularly effects sales of digital assets as defined in paragraph (a)(9)(ii)(D) of this section by receiving digital assets from one party and paying those digital assets, cash, or different digital assets to a second party. Bank BK has actual knowledge that payment made by S is a payment transaction and also knows S's gross proceeds therefrom. Accordingly, BK's services are facilitative services under paragraph (a)(21)(iii)(B) of this section and BK is acting as a digital asset middleman under paragraph (a)(21) of this section to effect sales of digital assets under paragraph (a)(10)(i)(D) of this section. S's payment of 10 units of DE to BK for the payment of those units, less BK's processing fee, to Bank MAB is a sale by S of digital assets under paragraph (a)(9)(ii)(D) of this section. Additionally, because S transferred digital assets to BK in a sale described in paragraph (a)(9)(ii)(D) of this section and because BK has an arrangement with S for the provision of digital asset payment services that provides that BK may verify S's identity, S is BK's customer under paragraph (a)(2)(ii)(A) of this section.

(15) *Example 15: Digital asset middleman and effect—(i) Facts.* SBK is in the business of effecting sales of stock and other securities on behalf of customers. To open an account with SBK, each customer must provide SBK with its name, address, and tax identification number. SBK accepts 20 units of digital asset DE from Customer P as payment for 10 shares of AB stock. Additionally, P pays SBK an additional 1 unit of digital asset DE as a commission for SBK's services.

(ii) *Analysis.* SBK's acceptance of 20 units of DE as payment for the AB stock is a facilitative service under paragraph (a)(21)(iii)(B) of this section because the payment is for property (the AB stock) that when sold would constitute a sale under paragraph (a)(9)(i) of this section by a broker that is in the business of effecting sales of stock and other securities. SBK's acceptance of 1 unit of DE as payment for SBK's commission is also a facilitative service under paragraph (a)(21)(iii)(B) of this section because SBK is a broker under paragraph (a)(1) of this section with respect to a sale of stock under paragraph (a)(9)(i) of this section. Accordingly, SBK is acting as a digital asset middleman to effect P's sale of 10 units of DE in return for the AB stock and P's sale of 1 unit of DE as payment for SBK's commission under paragraphs (a)(10)(i)(D) and (a)(21) of this section.

(16) *Example 16: Digital asset middleman and effect—(i) Facts.* J, an unmarried individual not otherwise exempt from reporting, enters into a contractual agreement with B, an individual not otherwise exempt from reporting, to exchange J's principal residence, Blackacre, which has a fair market value of \$225,000 for units of digital asset DE with a value of \$225,000. Prior to closing, J provides closing agent CA, who is a real estate reporting person under § 1.6045-4(e), with the certifications required under § 1.6045-4(c)(2)(iv) (to exempt the transaction from reporting under § 1.6045-4(a) due to Blackacre being J's principal residence). Prior to closing, B transfers the digital assets directly from B's wallet to J's wallet, and J certifies to the closing agent (CA) that J received the digital assets required to be paid under the contract.

(ii) *Analysis.* CA is performing services as a real estate reporting person with respect to a real estate transaction in which the real estate buyer (B) pays digital assets in full or partial consideration for the real estate. In addition, CA has actual knowledge that payment made to B included digital assets because the terms of the real estate contract provide for such payment. Accordingly, the closing services provided by CA are facilitative services under paragraph (a)(21)(iii)(B)(2) of this section, and CA is acting as a digital asset middleman under paragraph (a)(21) of this section to effect B's sale of 1,000 DE units under paragraph (a)(10)(i)(D) of this section. These conclusions are not impacted by whether or not CA is required to report the sale of the real estate by J under § 1.6045-4(a).

(17) *Example 17: Digital asset and cash—(i) Facts.* Y is a privately held corporation that issues DL, a digital representation of value designed to track the value of the U.S. dollar. DL is backed in part or in full by U.S. dollars held by Y, and Y offers to redeem units of DL for U.S. dollars at par at any time. Transactions involving DL utilize cryptography to secure transactions that are digitally recorded on a cryptographically secured distributed ledger called the DL blockchain. CRX is a digital asset broker that also provides hosted wallet services for its customers seeking to make trades of digital assets using CRX. R is a customer of CRX. R exchanges 100 units of DL for \$100 in cash

from CRX. CRX does not record this transaction on the DL blockchain, but instead records the transaction on CRX's own centralized private ledger.

(ii) *Analysis.* DL is not cash under paragraph (a)(12) of this section because it is not issued by a government or central bank. DL is a digital asset under paragraph (a)(19) of this section because it is a digital representation of value that is recorded on a cryptographically secured distributed ledger. The fact that CRX recorded R's transaction on its own private ledger and not on the DL blockchain does not change this conclusion.

(18) *Example 18: Broker and effect—(i) Facts.* Individual J is an artist in the business of creating and selling nonfungible tokens that reference J's digital artwork. To find buyers and to execute these transactions, J uses the services of P2X, an unrelated digital asset marketplace that provides a service for nonfungible token sellers to find buyers and automatically executing contracts in return for a transaction fee. J does not perform any other services with respect to these transactions. Using P2X's platform, buyer K purchases J's newly created nonfungible token (DA-J) for 1,000 units of digital asset DE. Using the interface provided by P2X, J and K execute their exchange using an automatically executing contract, which automatically transfers DA-J to K and K's payment of DE units to J.

(ii) *Analysis.* Although J is a principal in the exchange of DA-J for 1,000 units of DE, J is not acting as an obligor retiring its own debt obligations, a corporation redeeming its own stock, or an issuer of digital assets that is redeeming those digital assets, as described in paragraph (a)(10)(i)(B) of this section. Because J created DA-J as part of J's business of creating and selling specified nonfungible tokens, J is also not acting in these transactions as a dealer as described in paragraph (a)(10)(i)(C) of this section, as an agent for another party as described in paragraph (a)(10)(i)(A) of this section, or as a digital asset middleman described in paragraph (a)(10)(i)(D) of this section. Accordingly, J is not a broker under paragraph (a)(1) of this section because J does not effect sales of digital assets on behalf of others under the definition of effect under paragraph (a)(10)(i) of this section.

(19) *Example 19: Broker, sale, and effect—(i) Facts.* HWP is a person that regularly provides hosted wallet services for customers. HWP does not operate a digital asset trading platform, but at the direction of its customers regularly executes customer exchange orders using the services of digital asset trading platforms. Individual L maintains digital assets with HWP. L places an order with HWP to exchange 10 units of digital asset DE held by L with HWP for 100 units of digital asset RN. To execute the order, HWP places the order with PRX, a person, as defined in section 7701(a)(1) of the Code, that operates a digital asset trading platform. HWP debits L's account for the disposed DE units and credits L's account for the RN units received in exchange.

(ii) *Analysis.* The exchange of L's DE units for RN units is a sale under paragraph (a)(9)(ii)(A)(2) of this section. HWP acts as an agent for L in this sale, and the nature of this

agency is such that HWP ordinarily would know the gross proceeds from the sale. Accordingly, HWP has effected the sale under paragraph (a)(10)(i)(A) of this section. Additionally, HWP is a broker under paragraph (a)(1) of this section because in the ordinary course of its trade or business, HWP stands ready to effect sales to be made by others. If PRX is also a broker, see the multiple broker rule in paragraph (c)(3)(iii)(B) of this section.

(20) *Example 20: Digital asset and security.* M owns 10 ownership units of a fund organized as a trust described in § 301.7701-4(c) of this chapter that was formed to invest in digital assets. M's units are held in a securities brokerage account and are not recorded using cryptographically secured distributed ledger technology. Although the underlying investments are comprised of one or more digital assets, M's investment is in ownership units of a trust, and the units are not themselves digital assets under paragraph (a)(19) of this section because transactions involving these units are not secured using cryptography and are not digitally recorded on a distributed ledger, such as a blockchain. The answer would be the same if the fund is organized as a C corporation or partnership.

(21) *Example 21: Forward contract, closing transaction, and sale—(i) Facts.* On February 24, Year 1, J contracts with broker CRX to sell J's 10 units of digital asset DE to CRX at an agreed upon price, with delivery under the contract to occur at 4 p.m. on March 10, Year 1. Pursuant to this agreement, J delivers the 10 units of DE to CRX, and CRX pays J the agreed upon price in cash.

(ii) *Analysis.* Under paragraph (a)(7)(iii) of this section, the contract between J and CRX is a forward contract. J's delivery of digital asset DE pursuant to the forward contract is a closing transaction described in paragraph (a)(8) of this section that is treated as a sale of the underlying digital asset DE under paragraph (a)(9)(ii)(A)(3) of this section. Pursuant to the rules of paragraphs (a)(9)(i) and (a)(9)(ii)(A)(3) of this section, CRX may treat the delivery of DE as a sale without separating the profit or loss on the forward contract from the profit or loss on the delivery.

(22) *Example 22: Digital asset—(i) Facts.* On February 7, Year 1, J purchases a regulated futures contract on digital asset DE through futures commission merchant FCM. The contract is not recorded using cryptographically secured distributed ledger technology. The contract expires on the last Friday in June, Year 1. On May 1, Year 1, J enters into an offsetting closing transaction with respect to the regulated futures contract.

(ii) *Analysis.* Although the regulated futures contract's underlying assets are comprised of digital assets, J's investment is in the regulated futures contract, which is not a digital asset under paragraph (a)(19) of this section because transactions involving the contract are not secured using cryptography and are not digitally recorded using cryptographically secured distributed ledger technology, such as a blockchain. When J disposes of the contract, the transaction is a sale of a regulated futures contract covered by paragraph (a)(9)(i) of this section.

(23) *Example 23: Closing transaction and sale—(i) Facts.* On January 15, Year 1, J purchases digital asset DE through Broker. On March 1, Year 1, J sells a regulated futures contract on DE through Broker. The contract expires on the last Friday in June, Year 1. On the last Friday in June, Year 1, J delivers the DE in settlement of the regulated futures contract.

(ii) *Analysis.* J's delivery of the DE pursuant to the regulated futures contract is a closing transaction described in paragraph (a)(8) of this section that is treated as a sale of the regulated futures contract under paragraph (a)(9)(i) of this section. In addition, under paragraph (a)(9)(ii)(A)(3) of this section, J's delivery of digital asset DE pursuant to the settlement of the regulated futures contract is a sale of the underlying digital asset DE.

(c) * * *

(3) *Exceptions—(i) Sales effected for exempt recipients—(A) In general.* No return of information is required with respect to a sale effected for a customer that is an exempt recipient under paragraph (c)(3)(i)(B) of this section.

(B) *Exempt recipient defined.* The term *exempt recipient* means—

(1) A corporation as defined in section 7701(a)(3), whether domestic or foreign, except that this exclusion does not apply to sales of covered securities acquired on or after January 1, 2012, by an S corporation as defined in section 1361(a);

(2) An organization exempt from taxation under section 501(a) or an individual retirement plan;

(3) The United States or a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa, a political subdivision of any of the foregoing, a wholly owned agency or instrumentality of any one or more of the foregoing, or a pool or partnership composed exclusively of any of the foregoing;

(4) A foreign government, a political subdivision thereof, an international organization, or any wholly owned agency or instrumentality of the foregoing;

(5) A foreign central bank of issue as defined in § 1.895-1(b)(1) (i.e., a bank that is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency);

(6) A dealer in securities or commodities registered as such under the laws of the United States or a State;

(7) A futures commission merchant registered as such with the Commodity Futures Trading Commission;

(8) A real estate investment trust (as defined in section 856);

(9) An entity registered at all times during the taxable year under the

Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*);

(10) A common trust fund (as defined in section 584(a));

(11) A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization; or

(12) A U.S. digital asset broker as defined in paragraph (g)(4)(i)(A)(1) of this section other than an investment adviser registered either under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*) or with a state securities regulator and that investment adviser is not otherwise an exempt recipient in one or more of paragraphs (c)(3)(i)(B)(1) through (11) of this section.

(C) *Exemption certificate*—(1) *In general.* Except as provided in paragraph (c)(3)(i)(C)(2) or (3) of this section, a broker may treat a person described in paragraph (c)(3)(i)(B) of this section as an exempt recipient based on a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter); the broker's actual knowledge that the customer is a person described in paragraph (c)(3)(i)(B) of this section; or the applicable indicators described in § 1.6049–4(c)(1)(ii)(A) through (M). A broker may require an exempt recipient to file a properly completed exemption certificate and may treat an exempt recipient that fails to do so as a recipient that is not exempt.

(2) *Limitation for corporate customers.* For sales of covered securities acquired on or after January 1, 2012, a broker may not treat a customer as an exempt recipient described in paragraph (c)(3)(i)(B)(1) of this section based on the indicators of corporate status described in § 1.6049–4(c)(1)(ii)(A). However, for sales of all securities and for sales of digital assets, a broker may treat a customer as an exempt recipient if one of the following applies—

(i) The name of the customer contains the term *insurance company*, *indemnity company*, *reinsurance company*, or *assurance company*.

(ii) The name of the customer indicates that it is an entity listed as a per se corporation under § 301.7701–2(b)(8)(i) of this chapter.

(iii) The broker receives a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter) that asserts that the customer is not an S corporation as defined in section 1361(a).

(iv) The broker receives a withholding certificate described in § 1.1441–1(e)(2)(i) that includes a certification that the person whose name is on the certificate is a foreign corporation.

(3) *Limitation for U.S. digital asset brokers.* For sales of digital assets, a broker may not treat a customer as an exempt recipient described in paragraph (c)(3)(i)(B)(12) of this section unless it obtains from that customer a certification on a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter) that the customer is a U.S. digital asset broker described in paragraph (g)(4)(i)(A)(1) of this section.

(ii) *Excepted sales.* No return of information is required with respect to a sale effected by a broker for a customer if the sale is an excepted sale. The inclusion in this paragraph (c)(3)(ii) of a digital asset transaction is not intended to create an inference that the transaction is a sale of a digital asset under paragraph (a)(9)(ii) of this section. For this purpose, a sale is an excepted sale if it is—

(A) So designated by the Internal Revenue Service in a revenue ruling or revenue procedure (*see* § 601.601(d)(2) of this chapter);

(B) A sale with respect to which a return is not required by applying the rules of § 1.6049–4(c)(4) (by substituting the term *a sale subject to reporting under section 6045* for the term *an interest payment*);

(C) A sale of digital asset units withheld by the broker from digital assets received by the customer in any underlying digital asset sale to pay for the customer's digital asset transaction costs;

(D) A sale for cash of digital asset units withheld by the broker from digital assets received by the customer in a sale of digital assets for different digital assets (underlying sale) that is undertaken immediately after the underlying sale to satisfy the broker's obligation under section 3406 of the Code to deduct and withhold a tax with respect to the underlying sale;

(E) A disposition of a digital asset representing loyalty program credits or loyalty program rewards offered by a provider of non-digital asset goods or services to its customers, in exchange for non-digital asset goods or services from the provider or other merchants participating with the developer as part of the program, provided that the digital asset is not capable of being transferred, exchanged, or otherwise used outside the cryptographically secured distributed ledger network of the loyalty program;

(F) A disposition of a digital asset created and designed for use within a video game or network of video games in exchange for different digital assets also created and designed for use within that video game or video game network, provided the disposed of digital assets are not capable of being transferred, exchanged, or otherwise used outside of the video game or video game network;

(G) Except in the case of digital assets cleared or settled on a limited-access regulated network as described in paragraph (c)(8)(iii) of this section, a disposition of a digital asset representing information with respect to payment instructions or the management of inventory that does not consist of digital assets, within a cryptographically secured distributed ledger (or network of interoperable distributed ledgers) that provides access only to users of such information provided the digital assets disposed of are not capable of being transferred, exchanged, or otherwise used outside such distributed ledger or network; or

(H) A disposition of a digital asset offered by a seller of goods or provider of services to its customers that can be exchanged or redeemed only by those customers for goods or services provided by such seller or provider if the digital asset is not capable of being transferred, exchanged, or otherwise used outside the cryptographically secured distributed ledger network of the seller or provider and cannot be sold or exchanged for cash, stored-value cards, or qualifying stablecoins at a market rate inside the seller or provider's distributed ledger network.

(iii) *Multiple brokers*—(A) *In general.* If a broker is instructed to initiate a sale by a person that is an exempt recipient described in paragraph (c)(3)(i)(B)(6), (7), or (11) of this section, no return of information is required with respect to the sale by that broker. In a redemption of stock or retirement of securities, only the broker responsible for paying the holder redeemed or retired, or crediting the gross proceeds on the sale to that holder's account, is required to report the sale.

(B) *Special rule for sales of digital assets.* If more than one broker effects a sale of a digital asset on behalf of a customer, the broker responsible for first crediting the gross proceeds on the sale to the customer's wallet or account is required to report the sale. A broker that did not first credit the gross proceeds on the sale to the customer's wallet or account is not required to report the sale if prior to the sale that broker obtains a certification on a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter) that the

broker first crediting the gross proceeds on the sale is a person described in paragraph (c)(3)(i)(B)(12) of this section.

(iv) *Cash on delivery transactions.* In the case of a sale of securities through a cash on delivery account, a delivery versus payment account, or other similar account or transaction, only the broker that receives the gross proceeds from the sale against delivery of the securities sold is required to report the sale. If, however, the broker's customer is another broker (second-party broker) that is an exempt recipient, then only the second-party broker is required to report the sale.

(v) *Fiduciaries and partnerships.* No return of information is required with respect to a sale effected by a custodian or trustee in its capacity as such or a redemption of a partnership interest by a partnership, provided the sale is otherwise reported by the custodian or trustee on a properly filed Form 1041, or the redemption is otherwise reported by the partnership on a properly filed Form 1065, and all Schedule K-1 reporting requirements are satisfied.

(vi) *Money market funds—(A) In general.* No return of information is required with respect to a sale of shares in a regulated investment company that is permitted to hold itself out to investors as a money market fund under Rule 2a-7 under the Investment Company Act of 1940 (17 CFR 270.2a-7).

(B) *Effective/applicability date.* Paragraph (c)(3)(vi)(A) of this section applies to sales of shares in calendar years beginning on or after July 8, 2016. Taxpayers and brokers (as defined in § 1.6045-1(a)(1)), however, may rely on paragraph (c)(3)(vi)(A) of this section for sales of shares in calendar years beginning before July 8, 2016.

(vii) *Obligor payments on certain obligations.* No return of information is required with respect to payments representing obligor payments on—

(A) Nontransferable obligations (including savings bonds, savings accounts, checking accounts, and NOW accounts);

(B) Obligations as to which the entire gross proceeds are reported by the broker on Form 1099 under provisions of the Internal Revenue Code other than section 6045 (including stripped coupons issued prior to July 1, 1982); or

(C) Retirement of short-term obligations (*i.e.*, obligations with a fixed maturity date not exceeding 1 year from the date of issue) that have original issue discount, as defined in section 1273(a)(1), with or without application of the *de minimis* rule. The preceding sentence does not apply to a debt instrument issued on or after January 1,

2014. For a short-term obligation issued on or after January 1, 2014, *see* paragraph (c)(3)(xiii) of this section.

(D) Demand obligations that also are callable by the obligor and that have no premium or discount. The preceding sentence does not apply to a debt instrument issued on or after January 1, 2014.

(viii) *Foreign currency.* No return of information is required with respect to a sale of foreign currency other than a sale pursuant to a forward contract or regulated futures contract that requires delivery of foreign currency.

(ix) *Fractional share.* No return of information is required with respect to a sale of a fractional share of stock if the gross proceeds on the sale of the fractional share are less than \$20.

(x) *Certain retirements.* No return of information is required from an issuer or its agent with respect to the retirement of book entry or registered form obligations as to which the relevant books and records indicate that no interim transfers have occurred. The preceding sentence does not apply to a debt instrument issued on or after January 1, 2014.

(xi) *Short sales—(A) In general.* A broker may not make a return of information under this section for a short sale of a security entered into on or after January 1, 2011, until the year a customer delivers a security to satisfy the short sale obligation. The return must be made without regard to the constructive sale rule in section 1259 or to section 1233(h). In general, the broker must report on a single return the information required by paragraph (d)(2)(i)(A) of this section for the short sale except that the broker must report the date the short sale was closed in lieu of the sale date. In applying paragraph (d)(2)(i)(A) of this section, the broker must report the relevant information regarding the security sold to open the short sale and the adjusted basis of the security delivered to close the short sale and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222).

(B) *Short sale closed by delivery of a noncovered security.* A broker is not required to report adjusted basis and whether any gain or loss on the closing of the short sale is long-term or short-term if the short sale is closed by delivery of a noncovered security and the return so indicates. A broker that chooses to report this information is not subject to penalties under section 6721 or 6722 for failure to report this information correctly if the broker indicates on the return that the short

sale was closed by delivery of a noncovered security.

(C) *Short sale obligation transferred to another account.* If a short sale obligation is satisfied by delivery of a security transferred into a customer's account accompanied by a transfer statement (as described in § 1.6045A-1(b)(7)) indicating that the security was borrowed, the broker receiving custody of the security may not file a return of information under this section. The receiving broker must furnish a statement to the transferor that reports the amount of gross proceeds received from the short sale, the date of the sale, the quantity of shares, units, or amounts sold, and the Committee on Uniform Security Identification Procedures (CUSIP) number of the sold security (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* § 601.601(d)(2) of this chapter). The statement to the transferor also must include the transfer date, the name and contact information of the receiving broker, the name and contact information of the transferor, and sufficient information to identify the customer. If the customer subsequently closes the short sale obligation in the transferor's account with non-borrowed securities, the transferor must make the return of information required by this section. In that event, the transferor must take into account the information furnished under this paragraph (c)(3)(xi)(C) on the return unless the transferor knows that the information furnished under this paragraph (c)(3)(xi)(C) is incorrect or incomplete. A failure to report correct information that arises solely from this reliance is deemed to be due to reasonable cause for purposes of penalties under sections 6721 and 6722. *See* § 301.6724-1(a)(1) of this chapter.

(xii) *Cross reference.* For an exception for certain sales of agricultural commodities and certificates issued by the Commodity Credit Corporation after January 1, 1993, *see* paragraph (c)(7) of this section.

(xiii) *Short-term obligations issued on or after January 1, 2014.* No return of information is required under this section with respect to a sale (including a retirement) of a short-term obligation, as described in section 1272(a)(2)(C), that is issued on or after January 1, 2014.

(xiv) *Certain redemptions.* No return of information is required under this section for payments made by a stock transfer agent (as described in § 1.6045-1(b)(iv)) with respect to a redemption of stock of a corporation described in

section 1297(a) with respect to a shareholder in the corporation if—

(A) The stock transfer agent obtains from the corporation a written certification signed by a person authorized to sign on behalf of the corporation, that states that the corporation is described in section 1297(a) for each calendar year during which the stock transfer agent relies on the provisions of this paragraph (c)(3)(xiv), and the stock transfer agent has no reason to know that the written certification is unreliable or incorrect;

(B) The stock transfer agent identifies, prior to payment, the corporation as a participating FFI (including a reporting Model 2 FFI) (as defined in § 1.6049–4(f)(10) or (14), respectively), or reporting Model 1 FFI (as defined in § 1.6049–4(f)(13)), in accordance with the requirements of § 1.1471–3(d)(4) (substituting the terms *stock transfer agent* and *corporation* for the terms *withholding agent* and *payee*, respectively) and validates that status annually;

(C) The stock transfer agent obtains a written certification representing that the corporation shall report the payment as part of its account holder reporting obligations under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049–4(f)(7)) and provided the stock transfer agent does not know that the corporation is not reporting the payment as required. The paying agent may rely on the written certification until there is a change in circumstances or the paying agent knows or has reason to know that the statement is unreliable or incorrect. A stock transfer agent that knows that the corporation is not reporting the payment as required under chapter 4 of the Code or an applicable IGA must report all payments reportable under this section that it makes during the year in which it obtains such knowledge; and

(D) The stock transfer agent is not also acting in its capacity as a custodian, nominee, or other agent of the payee with respect to the payment.

(4) *Examples.* The following examples illustrate the application of the rules in paragraph (c)(3) of this section:

(i) *Example 1.* P, an individual who is not an exempt recipient, places an order with B, a person generally known in the investment community to be a federally registered broker/dealer, to effect a sale of P's stock in a publicly traded corporation. B, in turn, places an order to sell the stock with C, a second broker, who will execute the sale. B discloses to C the identity of the customer placing the order. C is not required to make a return of information with respect to the sale because C was instructed by B, an exempt recipient as defined in paragraph (c)(3)(i)(B)(6) of this section, to initiate the

sale. B is required to make a return of information with respect to the sale because P is B's customer and is not an exempt recipient.

(ii) *Example 2.* Assume the same facts as in paragraph (c)(4)(i) of this section (the facts in *Example 1*) except that B has an omnibus account with C so that B does not disclose to C whether the transaction is for a customer of B or for B's own account. C is not required to make a return of information with respect to the sale because C was instructed by B, an exempt recipient as defined in paragraph (c)(3)(i)(B)(6) of this section, to initiate the sale. B is required to make a return of information with respect to the sale because P is B's customer and is not an exempt recipient.

(iii) *Example 3.* D, an individual who is not an exempt recipient, enters into a cash on delivery stock transaction by instructing K, a federally registered broker/dealer, to sell stock owned by D, and to deliver the proceeds to L, a custodian bank. Concurrently with the above instructions, D instructs L to deliver D's stock to K (or K's designee) against delivery of the proceeds from K. The records of both K and L with respect to this transaction show an account in the name of D. Pursuant to paragraph (h)(1) of this section, D is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because D is L's customer and is not an exempt recipient.

(iv) *Example 4.* Assume the same facts as in paragraph (c)(4)(iii) of this section (the facts in *Example 3*) except that E, a federally registered investment adviser, instructs K to sell stock owned by D and to deliver the proceeds to L. Concurrently with the above instructions, E instructs L to deliver D's stock to K (or K's designee) against delivery of the proceeds from K. The records of both K and L with respect to the transaction show an account in the name of D. Pursuant to paragraph (h)(1) of this section, D is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because D is L's customer and is not an exempt recipient.

(v) *Example 5.* Assume the same facts as in paragraph (c)(4)(iv) of this section (the facts in *Example 4*) except that the records of both K and L with respect to the transaction show an account in the name of E. Pursuant to paragraph (h)(1) of this section, E is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because E is L's customer and is not an exempt recipient. E is required

to make a return of information with respect to the sale because D is E's customer and is not an exempt recipient.

(vi) *Example 6.* F, an individual who is not an exempt recipient, owns bonds that are held by G, a federally registered broker/dealer, in an account for F with G designated as nominee for F. Upon the retirement of the bonds, the gross proceeds are automatically credited to the account of F. G is required to make a return of information with respect to the retirement because G is the broker responsible for making payments of the gross proceeds to F.

(vii) *Example 7.* On June 24, 2010, H, an individual who is not an exempt recipient, opens a short sale of stock in an account with M, a broker. Because the short sale is entered into before January 1, 2011, paragraph (c)(3)(xi) of this section does not apply. Under paragraphs (c)(2) and (j) of this section, M must make a return of information for the year of the sale regardless of when the short sale is closed.

(viii) *Example 8—(A) Facts.* On August 25, 2011, H opens a short sale of stock in an account with M, a broker. H closes the short sale with M on January 25, 2012, by purchasing stock of the same corporation in the account in which H opened the short sale and delivering the stock to satisfy H's short sale obligation. The stock H purchased is a covered security.

(B) *Analysis.* Because the short sale is entered into on or after January 1, 2011, under paragraphs (c)(2) and (c)(3)(xi) of this section, the broker closing the short sale must make a return of information reporting the sale for the year in which the short sale is closed. Thus, M is required to report the sale for 2012. M must report on a single return the relevant information for the sold stock, the adjusted basis of the purchased stock, and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222). Thus, M must report the information about the short sale opening and closing transactions on a single return for taxable year 2012.

(ix) *Example 9—(A) Facts.* Assume the same facts as in paragraph (c)(4)(viii) of this section (the facts in *Example 8*) except that H also has an account with N, a broker, and satisfies the short sale obligation with M by borrowing stock of the same corporation from N and transferring custody of the borrowed stock from N to M. N indicates on the transfer statement that the transferred stock was borrowed in accordance with § 1.6045A–1(b)(7).

(B) *Analysis with respect to M.* Under paragraph (c)(3)(xi)(C) of this section, M may not file the return of information required under this section. M must furnish a statement to N that reports the gross proceeds from the short sale on August 25, 2011, the date of the sale, the quantity of shares sold, the CUSIP number or other security identifier number of the sold stock, the transfer date, the name and contact information of M and N, and information identifying H such as H's name and the account number from which H transferred the borrowed stock.

(C) *Analysis with respect to N.* N must report the gross proceeds from the short sale, the date the short sale was closed, the

adjusted basis of the stock acquired to close the short sale, and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222) on the return of information N is required to file under paragraph (c)(2) of this section when H closes the short sale in the account with N.

(x) *Example 10: Excepted sale of digital assets representing payment instructions—(A) Facts.* BNK is a bank that uses a cryptographically secured distributed ledger technology system (DLT) that provides access only to other member banks to securely transfer payment instructions that are not securities or commodities described in paragraph (c)(8)(iii) of this section. These payment instructions are exchanged between member banks through the use of digital asset DX. Dispositions of DX do not give rise to sales of other digital assets within the cryptographically secured distributed ledger (or network of interoperable distributed ledgers) and are not capable of being transferred, exchanged, or otherwise used, outside the DLT system. BNK disposes of DX using the DLT system to make a payment instruction to another bank within the DLT system.

(B) *Analysis.* BNK's disposition of DX using the DLT system to make a payment instruction to another bank within the DLT system is a disposition of a digital asset representing payment instructions that are not securities or commodities within a cryptographically secured distributed ledger that provides access only to users of such information. Because DX cannot be transferred, exchanged, or otherwise used, outside of DLT, and because the payment instructions are not dual classification assets under paragraph (c)(8)(iii) of this section, BNK's disposition of DX is an excepted sale under paragraph (c)(3)(ii)(G) of this section.

(xi) *Example 11: Excepted sale of digital assets representing a loyalty program—(A) Facts.* S created a loyalty program as a marketing tool to incentivize customers to make purchases at S's store, which sells non-digital asset goods and services. Customers that join S's loyalty program receive 1 unit of digital asset LY at the end of each month for every \$1 spent in S's store. Units of LY can only be disposed of within S's cryptographically secured distributed ledger (DLY) in exchange for goods or services provided by S or merchants, such as M, that have contractually agreed to provide goods or services to S's loyalty customers in exchange for a predetermined payment from S. Customer C is a participant in S's loyalty program and has earned 1,000 units of LY. C redeems 1,000 units of LY in exchange for non-digital asset goods in M's store.

(B) *Analysis.* Customer C's disposition of LY using the DLY system in exchange for non-digital asset goods in M's store is a disposition of a digital asset representing loyalty program credits in exchange for non-digital asset goods or services from M, a merchant participating with S's loyalty program. Because LY cannot be transferred, exchanged, or otherwise used outside of DLY, C's disposition of LY is an excepted sale under paragraph (c)(3)(ii)(E) of this section.

(xii) *Example 12: Multiple brokers—(A) Facts.* L, an individual who is not an exempt recipient, maintains digital assets with HWP, a U.S. corporation that provides hosted wallet services. L also maintains an account at CRX, a U.S. corporation that operates a digital asset trading platform and that also provides custodial services for digital assets held by L. L places an order with HWP to exchange 10 units of digital asset DE for 100 units of digital asset RN. To effect the order, HWP places the order with CRX and communicates to CRX that the order is on behalf of L. Prior to initiating the transaction, CRX obtains a certification from HWP on a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter) that HWP is a U.S. digital asset broker described in paragraph (g)(4)(i)(A)(1) of this section. CRX completes the transaction and transfers the 100 units of RN to HWP. HWP, in turn, credits L's account with the 100 units of RN.

(B) *Analysis.* HWP is the broker responsible for first crediting the gross proceeds on the sale to L's wallet. Accordingly, because CRX has obtained from HWP a certification on a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter) that HWP is a U.S. digital asset broker described in paragraph (g)(4)(i)(A)(1) of this section, CRX is not required to make a return of information with respect to the sale of 100 units of RN effected on behalf of L under paragraph (c)(3)(iii)(B) of this section. In contrast, because HWP is the broker that credits the 100 units of RN to L's account, HWP is required to make a return of information with respect to the sale.

(xiii) *Example 13: Multiple brokers—(A) Facts.* The facts are the same as in paragraph (c)(4)(xii)(A) of this section (the facts in *Example 12*), except that CRX deposits the 100 units of RN into L's account with CRX after the transaction is effected by CRX. Thereafter, L transfers the 100 units of RN in L's account with CRX to L's account with HWP. Prior to the transaction, HWP obtained a certification from CRX on a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter) that CRX is a U.S. digital asset broker described in paragraph (g)(4)(i)(A)(1) of this section.

(B) *Analysis.* Under paragraph (c)(3)(iii)(B) of this section, despite being instructed by HWP to make the sale of 100 units of RN on behalf of L, CRX is required to make a return of information with respect to the sale effected on behalf of L because CRX is the broker that credits the 100 units of RN to L's account. In contrast, HWP is not required to make a return of information with respect to the sale effected on behalf of L because HWP obtained from CRX a certification on a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter) that CRX is a U.S. digital asset broker described in paragraph (g)(4)(i)(A)(1) of this section.

(5) * * *

(i) *In general.* A broker effecting closing transactions in regulated futures contracts shall report information with respect to regulated futures contracts

solely in the manner prescribed in this paragraph (c)(5). In the case of a sale that involves making delivery pursuant to a regulated futures contract, only the profit or loss on the contract is reported as a transaction with respect to regulated futures contracts under this paragraph (c)(5); such sales are, however, subject to reporting under paragraph (d)(2)(i)(A). The information required under this paragraph (c)(5) must be reported on a calendar year basis, unless the broker is advised in writing by an account's owner that the owner's taxable year is other than a calendar year and the broker elects to report with respect to regulated futures contracts in such account on the basis of the owner's taxable year. The following information must be reported as required by Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*, or any successor form, with respect to regulated futures contracts held in a customer's account:

(A) The name, address, and taxpayer identification number of the customer.

(B) The net realized profit or loss from all regulated futures contracts closed during the calendar year.

(C) The net unrealized profit or loss in all open regulated futures contracts at the end of the preceding calendar year.

(D) The net unrealized profit or loss in all open regulated futures contracts at the end of the calendar year.

(E) The aggregate profit or loss from regulated futures contracts ((b) + (d) – (c)).

(F) Any other information required by Form 1099-B. See 17 CFR 1.33. For this purpose, the end of a year is the close of business of the last business day of such year. In reporting under this paragraph (c)(5), the broker shall make such adjustments for commissions that have actually been paid and for option premiums as are consistent with the books of the broker. No additional returns of information with respect to regulated futures contracts so reported are required.

* * * * *

(8) *Special coordination rules for reporting digital assets that are dual classification assets—(i) General rule for reporting dual classification assets as digital assets.* Except in the case of a sale described in paragraph (c)(8)(ii), (iii), or (iv) of this section, for any sale of a digital asset under paragraph (a)(9)(ii) of this section that also constitutes a sale under paragraph (a)(9)(i) of this section, the broker must treat the transaction as set forth in paragraphs (c)(8)(i)(A) through (D). For purposes of this section, an asset described in this paragraph (c)(8)(i) is a dual classification asset.

(A) The broker must report the sale only as a sale of a digital asset under paragraph (a)(9)(ii) of this section and not as a sale under paragraph (a)(9)(i) of this section.

(B) The broker must treat the sale only as a sale of a specified security under paragraph (a)(14)(v) or (vi) of this section, as applicable, and not as a specified security under paragraph (a)(14)(i), (ii), (iii), or (iv) of this section.

(C) The broker must apply the reporting rules set forth in paragraphs (d)(2)(i)(B) through (D) of this section, as applicable, for the information required to be reported for such sale.

(D) For a sale of a dual classification asset that is treated as a tokenized security, the broker must report the information set forth in paragraph (c)(8)(i)(D)(3) of this section.

(1) A *tokenized security* is a dual classification asset that:

(i) Provides the holder with an interest in another asset that is a security described in paragraph (a)(3) of this section, other than a security that is also a digital asset; or

(ii) Constitutes an asset the offer and sale of which was registered with the U.S. Securities and Exchange Commission, other than an asset treated as a security for securities law purposes solely as an investment contract.

(2) For purposes of paragraph (c)(8)(i)(D)(1) of this section, a qualifying stablecoin is not treated as a tokenized security.

(3) In the case of a sale of a tokenized security, the broker must report the information set forth in paragraph (d)(2)(i)(B)(6) of this section, as applicable. In the case of a tokenized security that is a specified security under paragraph (a)(14)(i), (ii), (iii), or (iv) of this section, the broker must also report the information set forth in paragraph (d)(2)(i)(D)(4) of this section.

(ii) *Reporting of dual classification assets that constitute contracts covered by section 1256(b) of the Code.* For a sale of a digital asset on or after January 1, 2025, that is also a contract covered by section 1256(b), the broker must report the sale only under paragraph (c)(5) of this section including, as appropriate, the application of the rules in paragraph (m)(3) of this section.

(iii) *Reporting of dual classification assets cleared or settled on a limited-access regulated network—(A) General rule.* The coordination rule of paragraph (c)(8)(i) of this section does not apply to any sale of a dual classification asset that is a digital asset solely because the sale of such asset is cleared or settled on a limited-access regulated network described in paragraph (c)(8)(iii)(B) of this section. In such case, the broker

must report such sale only as a sale under paragraph (a)(9)(i) of this section and not as a sale under paragraph (a)(9)(ii) of this section and must treat the sale as a sale of a specified security under paragraph (a)(14)(i), (ii), (iii), or (iv) of this section, to the extent applicable, and not as a sale of a specified security under paragraph (a)(14)(v) or (vi) of this section. For all other purposes of this section including transfers, a dual classification asset that is a digital asset solely because it is cleared or settled on a limited-access regulated network is not treated as a digital asset and is not reportable as a digital asset. *See* paragraph (d)(2)(i)(A) of this section for the information required to be reported for such a sale.

(B) *Limited-access regulated network.* For purposes of this section, a limited-access regulated network is described in paragraph (c)(8)(iii)(B)(1) or (2) of this section.

(1) A cryptographically secured distributed ledger, or network of interoperable cryptographically secured distributed ledgers, that provides clearance or settlement services and that either:

(i) Provides access only to persons described in one or more of paragraphs (c)(3)(i)(B)(6), (7), (10), or (11) of this section; or

(ii) Is provided exclusively to its participants by an entity that has registered with the U.S. Securities and Exchange Commission as a clearing agency, or that has received an exemption order from the U.S. Securities and Exchange Commission as a clearing agency, under section 17A of the Securities Exchange Act of 1934.

(2) A cryptographically secured distributed ledger controlled by a single person described in one of paragraphs (c)(3)(i)(B)(6) through (11) of this section that permits the ledger to be used solely by itself and its affiliates, and therefore does not provide access to the ledger to third parties such as customers or investors, in order to clear or settle sales of assets.

(iv) *Reporting of dual classification assets that are interests in money market funds.* The coordination rule of paragraph (c)(8)(i) of this section does not apply to any sale of a dual classification asset that is a share in a regulated investment company that is permitted to hold itself out to investors as a money market fund under Rule 2a–7 under the Investment Company Act of 1940 (17 CFR 270.2a–7). In such case, the broker must treat such sale only as a sale under paragraph (a)(9)(i) of this section and not as a sale under paragraph (a)(9)(ii) of this section. *See* paragraph (c)(3)(vi) of this section,

providing that no return of information is required for shares described in the first sentence of this paragraph (c)(8)(iv).

(v) *Example: Digital asset securities—(A) Facts.* Brokers registered under the securities laws of the United States have formed a large network (broker network) that maintains accounts for customers seeking to purchase and sell stock. The broker network clears and settles sales of this stock using a cryptographically secured distributed ledger (DLN) that provides clearance or settlement services to the broker network. DLN may not be used by any person other than a registered broker in the broker network.

(B) *Analysis.* DLN is a limited-access regulated network described in paragraph (c)(8)(iii)(B)(1)(i) of this section because it is a cryptographically secured distributed ledger that provides clearance or settlement services and that provides access only to brokers described in paragraph (c)(3)(i)(B)(6) of this section. Additionally, sales of stock cleared on DLN are sales of securities under paragraph (a)(9)(i) of this section and sales of digital assets under paragraph (a)(9)(ii) of this section. Accordingly, sales of stock cleared on DLN are described in paragraph (c)(8)(iii) of this section and the coordination rule of paragraph (c)(8)(i) of this section does not apply to these sales. Therefore, the sales of stock cleared on DLN are reported only under paragraph (a)(9)(i) of this section. *See* paragraph (d)(2)(i)(A) of this section for the method for reporting the information required to be reported for such a sale.

(d) * * *

(2) *Transactional reporting—(i) Required information—(A) General rule for sales described in paragraph (a)(9)(i) of this section.* Except as provided in paragraph (c)(5) of this section, for each sale described in paragraph (a)(9)(i) of this section for which a broker is required to make a return of information under this section, the broker must report on Form 1099–B, *Proceeds From Broker and Barter Exchange Transactions*, or any successor form, the name, address, and taxpayer identification number of the customer, the property sold, the Committee on Uniform Security Identification Procedures (CUSIP) number of the security sold (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* § 601.601(d)(2) of this chapter), the adjusted basis of the security sold, whether any gain or loss with respect to the security sold is long-term or short-term (within the meaning

of section 1222 of the Code), the gross proceeds of the sale, the sale date, and other information required by the form in the manner and number of copies required by the form. In addition, for a sale of a covered security on or after January 1, 2014, a broker must report on Form 1099-B whether any gain or loss is ordinary. *See* paragraph (m) of this section for additional rules related to options and paragraph (n) of this section for additional rules related to debt instruments. *See* paragraph (c)(8) of this section for rules related to sales of securities or sales of commodities under paragraph (a)(9)(i) of this section that are also sales of digital assets under paragraph (a)(9)(ii) of this section.

(B) *Required information for digital asset transactions.* Except in the case of a sale of a qualifying stablecoin or a specified nonfungible token for which the broker reports in the manner set forth in paragraph (d)(10) of this section and subject to the exception described in paragraph (d)(2)(i)(C) of this section for sales of digital assets described in paragraph (a)(9)(ii)(D) of this section (sales effected by processors of digital asset payments), for each sale of a digital asset described in paragraph (a)(9)(ii) of this section for which a broker is required to make a return of information under this section, the broker must report on Form 1099-DA, *Digital Asset Proceeds From Broker Transactions*, or any successor form, in the manner required by such form or instructions the following information:

(1) The name, address, and taxpayer identification number of the customer;

(2) The name and number of units of the digital asset sold;

(3) The sale date;

(4) The gross proceeds amount (after reduction for the allocable digital asset transaction costs as defined and allocated pursuant to paragraph (d)(5)(iv) of this section);

(5) Whether the sale was for cash, stored-value cards, or in exchange for services or other property;

(6) In the case of a sale that is reported as a digital asset sale pursuant to the rule in paragraph (c)(8)(i) of this section and is described as a tokenized security in paragraph (c)(8)(i)(D) of this section, the broker must also report to the extent required by Form 1099-DA or instructions: the CUSIP number of the security sold (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* § 601.601(d)(2) of this chapter); any information required under paragraph (m) of this section (related to options); any information required under paragraph (n) of this

section (related to debt instruments); and any other information required by the form or instructions;

(7) For each such sale of a digital asset that was held by the broker in a hosted wallet on behalf of a customer and was previously transferred into an account at the broker (transferred-in digital asset), the broker must also report the date of such transfer in and the number of units transferred in by the customer;

(8) Whether the broker took into account customer-provided acquisition information from the customer or the customer's agent as described in paragraph (d)(2)(ii)(B)(4) of this section when determining the identification of the units sold (without regard to whether the broker's determination with respect to the particular unit sold was derived from the broker's own records or from that information); and

(9) Any other information required by the form or instructions.

(C) *Exception for certain sales effected by processors of digital asset payments.*

A broker is not required to report any information required by paragraph (d)(2)(i)(B) of this section with respect to a sale of a digital asset described in paragraph (a)(9)(ii)(D) of this section (sales effected by processors of digital asset payments) by a customer if the gross proceeds (after reduction for the allocable digital asset transaction costs) from all such sales of digital assets effected by that broker for the year by the customer do not exceed \$600. Gross proceeds from sales of qualifying stablecoins or specified nonfungible tokens that are reported in the manner set forth in paragraph (d)(10) of this section are not included in determining if this \$600 threshold has been met. For the rules applicable for determining who the customer is for purposes of calculating this \$600 threshold in the case of a joint account, *see* paragraph (d)(10)(v) of this section.

(D) *Acquisition information for sales of certain digital assets.* Except in the case of a sale of a qualifying stablecoin or a specified nonfungible token for which the broker reports in the manner set forth in paragraph (d)(10) of this section, for each sale described in paragraph (a)(9)(ii) of this section on or after January 1, 2026, of a covered security defined in paragraph (a)(15)(i)(H), (I), or (K) of this section that was acquired by the broker for the customer and held in the customer's account, for which a broker is required to make a return of information under paragraph (d)(2)(i)(B) of this section, the broker must also report the following information:

(1) The adjusted basis of the covered security sold calculated in accordance with paragraph (d)(6) of this section;

(2) The date such covered security was purchased, and whether any gain or loss with respect to the covered security sold is long-term or short-term in accordance with paragraph (d)(7) of this section;

(3) For purpose of determining the information required in paragraphs (d)(2)(i)(D)(1) through (2) in the case of an option and any asset delivered in settlement of an option, the broker must apply any applicable rules set forth in paragraph (m) of this section; and

(4) In the case of a sale that is reported as a digital asset sale pursuant to the rule in paragraph (c)(8)(i) of this section and is described as a tokenized security in paragraph (c)(8)(i)(D) of this section, *see* paragraphs (d)(6)(iii)(A)(2) and (d)(7)(ii)(A)(2) of this section regarding the basis and holding period adjustments required for wash sales, paragraph (d)(6)(v) of this section for rules regarding the application of the average basis method, paragraph (m) of this section for rules related to options, paragraph (n) of this section for rules related to debt instruments, and any other information required by the form or instructions.

(ii) *Specific identification of specified securities—(A) In general.* Except as provided in § 1.1012-1(e)(7)(ii), for a specified security described in paragraph (a)(14)(i) of this section sold on or after January 1, 2011, or for a specified security described in paragraph (a)(14)(ii) of this section sold on or after January 1, 2014, a broker must report a sale of less than the entire position in an account of a specified security that was acquired on different dates or at different prices consistently with a customer's adequate and timely identification of the security to be sold. *See* § 1.1012-1(c). If the customer does not provide an adequate and timely identification for the sale, the broker must first report the sale of securities in the account for which the broker does not know the acquisition or purchase date followed by the earliest securities purchased or acquired, whether covered securities or noncovered securities.

(B) *Identification of digital assets sold, disposed of, or transferred.* For a specified security described in paragraph (a)(14)(v) of this section, a broker must determine the unit sold, disposed of, or transferred, if less than the entire position in an account of such specified security that was acquired on different dates or at different prices, consistently with the adequate identification of the digital asset to be sold, disposed of, or transferred.

(1) *No identification of units by customer.* In the case of multiple units of the same digital asset that are held by a broker for a customer, if the customer does not provide the broker with an adequate identification of which units of a digital asset are sold, disposed of, or transferred by the date and time of the sale, disposition, or transfer, and the broker does not have adequate transfer-in date records and does not have or take into account customer-provided acquisition information as defined by paragraph (d)(2)(ii)(B)(4) of this section, then the broker must first report the sale, disposition, or transfer of units that were not acquired by the broker for the customer. After the disposition of all such units of digital assets, the broker must treat units as sold, disposed of, or transferred in order of time from the earliest date on which units of the same digital asset were acquired by the customer. See paragraph (d)(2)(ii)(B)(4) of this section for circumstances under which a broker may use information provided by the customer or the customer's agent to determine when units of a digital asset were acquired by the customer. If the broker does not receive customer-provided acquisition information with respect to digital assets that were transferred into the customer's account or otherwise does not take such information into account, the broker must treat those units as acquired as of the date and time of the transfer.

(2) *Adequate identification of units by customer.* Except as provided in paragraph (d)(2)(ii)(B)(3) of this section, when multiple units of the same digital asset are left in the custody of the broker, an adequate identification occurs if, no later than the date and time of the sale, disposition, or transfer, the customer specifies to the broker the particular units of the digital asset to be sold, disposed of, or transferred by reference to any identifier that the broker designates as sufficiently specific to determine the units sold, disposed of, or transferred. For example, a customer's reference to the purchase date and time of the units to be sold may be designated by the broker as sufficiently specific to determine the units sold, disposed of, or transferred if no other unidentified units were purchased at that same purchase date and time or purchase price. To the extent permitted by paragraph (d)(2)(ii)(B)(4) of this section, a broker may take into account customer-provided acquisition information with respect to transferred-in digital assets for purposes of enabling a customer to make a sufficiently specific reference. A

standing order or instruction for the specific identification of digital assets is treated as an adequate identification made at the date and time of sale, disposition, or transfer. In the case of a broker that offers only one method of making a specific identification, such method is treated as a standing order or instruction within the meaning of the prior sentence.

(3) *Special rule for the identification of certain units withheld from a transaction.* Notwithstanding paragraphs (d)(2)(ii)(B)(1) and (2) of this section, in the case of a sale of digital assets in exchange for other digital assets differing materially in kind or in extent and for which the broker withholds units of the digital assets received for either the broker's obligation to deduct and withhold a tax under section 3406, or for payment of the customer's digital asset transaction costs as defined in paragraph (d)(5)(iv)(A) of this section, the customer is deemed to have made an adequate identification, within the meaning of paragraph (d)(2)(ii)(B)(2) of this section, for such withheld units as from the units received in the underlying transaction regardless of any other adequate identification within the meaning of paragraph (d)(2)(ii)(B)(2) of this section designating other units of the same digital asset as the units sold, disposed of, or transferred.

(4) *Customer-provided acquisition information for digital assets.* For purposes of identifying which units are sold, disposed of, or transferred under paragraph (d)(2)(ii)(A) of this section, a broker is permitted, but not required, to take into account customer-provided acquisition information. For purposes of this section, customer-provided acquisition information means reasonably reliable information, such as the date and time of acquisition of units of a digital asset, provided by a customer or the customer's agent to the broker no later than the date and time of a sale, disposition, or transfer. Reasonably reliable information includes purchase or trade confirmations at other brokers or immutable data on a public distributed ledger. Solely for purposes of penalties under sections 6721 and 6722, a broker that takes into account customer-provided acquisition information for purposes of identifying which units are sold, disposed of, or transferred is deemed to have relied upon this information in good faith if the broker neither knows nor has reason to know that the information is incorrect. See § 301.6724–1(c)(6) of this chapter.

(iii) *Penalty relief for reporting information not subject to reporting—*

(A) *Noncovered securities.* A broker is not required to report adjusted basis and the character of any gain or loss for the sale of a noncovered security if the return identifies the sale as a sale of a noncovered security. A broker that chooses to report this information for a noncovered security is not subject to penalties under section 6721 or 6722 of the Code for failure to report this information correctly if the return identifies the sale as a sale of a noncovered security. For purposes of this paragraph (d)(2)(iii)(A), a broker must treat a security for which a broker makes the single-account election described in § 1.1012–1(e)(11)(i) as a covered security.

(B) *Gross proceeds from digital assets sold before applicability date.* A broker is not required to report the gross proceeds from the sale of a digital asset as described in paragraph (a)(9)(ii) of this section if the sale is effected prior to January 1, 2025. A broker that chooses to report this information on either the Form 1099-B, or when available the Form 1099-DA, pursuant to paragraph (d)(2)(i)(B) of this section is not subject to penalties under section 6721 or 6722 for failure to report this information correctly. See paragraph (d)(2)(iii)(A) of this section for the reporting of adjusted basis and the character of any gain or loss for the sale of a noncovered security that is a digital asset.

(iv) *Information from other parties and other accounts—*(A) *Transfer and issuer statements.* When reporting a sale of a covered security, a broker must take into account all information, other than the classification of the security (such as stock), furnished on a transfer statement (as described in § 1.6045A–1) and all information furnished or deemed furnished on an issuer statement (as described in § 1.6045B–1) unless the statement is incomplete or the broker has actual knowledge that it is incorrect. A broker may treat a customer as a minority shareholder when taking the information on an issuer statement into account unless the broker knows that the customer is a majority shareholder and the issuer statement reports the action's effect on the basis of majority shareholders. A failure to report correct information that arises solely from reliance on information furnished on a transfer statement or issuer statement is deemed to be due to reasonable cause for purposes of penalties under sections 6721 and 6722. See § 301.6724–1(a)(1) of this chapter.

(B) *Other information with respect to securities.* Except in the case of a covered security that is described in paragraph (a)(15)(i)(H), (J), or (K) of this

section, a broker is permitted, but not required, to take into account information about a covered security other than what is furnished on a transfer statement or issuer statement, including any information the broker has about securities held by the same customer in other accounts with the broker. For purposes of penalties under sections 6721 and 6722, a broker that takes into account information with respect to securities described in the previous sentence that is received from a customer or third party other than information furnished on a transfer statement or issuer statement is deemed to have relied upon this information in good faith if the broker neither knows nor has reason to know that the information is incorrect. *See* § 301.6724–1(c)(6) of this chapter.

(v) *Failure to receive a complete transfer statement for securities.* A broker that has not received a complete transfer statement as required under § 1.6045A–1(a)(3) for a transfer of a specified security described in paragraphs (a)(14)(i) through (iv) of this section must request a complete statement from the applicable person effecting the transfer unless, under § 1.6045A–1(a), the transferor has no duty to furnish a transfer statement for the transfer. The broker is only required to make this request once. If the broker does not receive a complete transfer statement after requesting it, the broker may treat the security as a noncovered security upon its subsequent sale or transfer. A transfer statement for a covered security is complete if, in the view of the receiving broker, it provides sufficient information to comply with this section when reporting the sale of the security. A transfer statement for a noncovered security is complete if it indicates that the security is a noncovered security.

(vi) *Reporting by other parties after a sale of securities—(A) Transfer statements.* If a broker receives a transfer statement indicating that a security is a covered security after the broker reports the sale of the security, the broker must file a corrected return within thirty days of receiving the statement unless the broker reported the required information on the original return consistently with the transfer statement.

(B) *Issuer statements.* If a broker receives or is deemed to receive an issuer statement after the broker reports the sale of a covered security, the broker must file a corrected return within thirty days of receiving the issuer statement unless the broker reported the required information on the original return consistently with the issuer statement.

(C) *Exception.* A broker is not required to file a corrected return under this paragraph (d)(2)(vi) if the broker receives the transfer statement or issuer statement more than three years after the broker filed the return.

(vii) *Examples.* The following examples illustrate the rules of this paragraph (d)(2). Unless otherwise indicated, all events and transactions described in paragraphs (d)(2)(vii)(C) and (D) of this section (*Examples 3 and 4*) occur on or after January 1, 2026.

(A) *Example 1—(1) Facts.* On February 22, 2012, K sells 100 shares of stock of C, a corporation, at a loss in an account held with F, a broker. On March 15, 2012, K purchases 100 shares of C stock for cash in an account with G, a different broker. Because K acquires the stock purchased on March 15, 2012, for cash in an account after January 1, 2012, under paragraph (a)(15) of this section, the stock is a covered security. K asks G to increase K's adjusted basis in the stock to account for the application of the wash sale rules under section 1091 to the loss transaction in the account held with F.

(2) *Analysis.* Under paragraph (d)(2)(iv)(B) of this section, G is not required to take into account the information provided by K when subsequently reporting the adjusted basis and whether any gain or loss on the sale is long-term or short-term. If G chooses to take this information into account, under paragraph (d)(2)(iv)(B) of this section, G is deemed to have relied upon the information received from K in good faith for purposes of penalties under sections 6721 and 6722 if G neither knows nor has reason to know that the information provided by K is incorrect.

(B) *Example 2—(1) Facts.* L purchases shares of stock of a single corporation in an account with F, a broker, on April 17, 1969, April 17, 2012, April 17, 2013, and April 17, 2014. In January 2015, L sells all the stock.

(2) *Analysis.* Under paragraph (d)(2)(i)(A) of this section, F must separately report the gross proceeds and adjusted basis attributable to the stock purchased in 2014, for which the gain or loss on the sale is short-term, and the combined gross proceeds and adjusted basis attributable to the stock purchased in 2012 and 2013, for which the gain or loss on the sale is long-term. Under paragraph (d)(2)(iii)(A) of this section, F must also separately report the gross proceeds attributable to the stock purchased in 1969 as the sale of noncovered securities in order to avoid treatment of this sale as the sale of covered securities.

(C) *Example 3: Ordering rule—(1) Facts.* On August 1, Year 1, TP opens a hosted wallet account at CRX, a digital asset broker that owns and operates a digital asset trading platform, and purchases within the account 10 units of digital asset DE for \$9 per unit. On January 1, Year 2, TP opens a hosted wallet account at BEX, another digital asset broker that owns and operates a digital asset trading platform, and purchases within this account 20 units of digital asset DE for \$5 per unit. On August 1, Year 3, TP transfers the digital asset units held in TP's hosted wallet account with CRX into TP's hosted wallet

account with BEX. On September 1, Year 3, TP directs BEX to sell 10 units of DE but does not specify which units are to be sold and does not provide to BEX purchase date and time information with respect to the DE units transferred into TP's account with BEX. BEX has adequate transfer-in date records with respect to TP's transfer of the 10 units of DE on August 1, Year 3. BEX effects the sale on TP's behalf for \$10 per unit.

(2) *Analysis.* TP did not make an adequate identification of the units to be sold in a sale of DE units that was less than TP's entire position in digital asset DE. Therefore, BEX must treat the units of digital asset DE sold according to the ordering rule provided in paragraph (d)(2)(ii)(B) of this section.

Pursuant to that rule, because BEX has adequate transfer-in date records with respect to TP's transfer of the 10 units of DE on August 1, Year 3, and because TP did not give BEX customer-provided acquisition information as defined by paragraph (d)(2)(ii)(B)(4) of this section with respect to the units transferred into TP's account at BEX, the units sold must be attributed to the earliest units of digital asset DE acquired by TP. Additionally, because TP did not give BEX customer-provided acquisition information, BEX must treat those units as acquired as of the date and time of the transfer (August 1, Year 3). Accordingly, the 10 units sold must be attributed to 10 of the 20 DE units purchased by TP on January 1, Year 2, in the BEX account because based on the information known to BEX these units were purchased prior to the date (August 1, Year 3) when TP transferred the other units purchased at CRX into the account. The DE units are digital assets that were acquired on or after January 1, 2026, for TP by a broker (BEX) providing custodial services, and, thus, constitute covered securities under paragraph (a)(15)(i)(J) of this section. Accordingly, in addition to the gross proceeds and other information required to be reported under paragraph (d)(2)(i)(B) of this section, BEX must also report the adjusted basis of the DE units sold, the date the DE units were purchased, and whether any gain or loss with respect to the DE units sold is long-term or short-term as required by paragraph (d)(2)(i)(D) of this section. Finally, because TP did not give BEX customer-provided acquisition information, TP will be required to treat different units as sold under the rules provided by § 1.1012–1(j)(3) from those units that BEX treats as sold under this section unless TP adopts a standing order to follow the ordering rule result required by BEX. *See* § 1.1012–1(j)(5)(iv) (*Example 4*).

(D) *Example 4: Ordering rule—(1) Facts.* The facts are the same as in paragraph (d)(2)(vii)(C)(1) of this section (the facts in *Example 3*), except on September 1, Year 3, TP's agent (CRX) provides BEX with purchase confirmations showing that the 10 units TP transferred into TP's account at BEX were purchased on August 1, Year 1. BEX neither knows nor has reason to know that the information supplied by CRX is incorrect and chooses to take this information into account for purposes of identifying which of the TP's units are sold, disposed of, or transferred.

(2) *Analysis.* Because TP did not make an adequate identification of the units to be sold

in a sale of DE units that was less than TP's entire position in digital asset DE, BEX must treat the units of digital asset DE sold as the earliest units of digital asset DE acquired by TP. The purchase confirmations (showing a purchase date of August 1, Year 1) for the 10 units that were transferred into TP's account at BEX constitute customer-provided acquisition information under paragraph (d)(2)(ii)(B)(4) of this section, which BEX is permitted, but not required, to take into account. Accordingly, BEX is permitted to treat the 10 units sold by TP as the 10 DE units TP purchased on August 1, Year 1 (and transferred into BEX's account on August 1, Year 3), because these were the earliest units of digital asset DE acquired by TP. The DE units are digital assets that were acquired on or after January 1, 2026, for TP by a broker (CRX) providing custodial services, and, thus, constitute covered securities under paragraph (a)(15)(i)(f) of this section. However, because these covered securities were not acquired and thereafter held by the selling broker (BEX), BEX is not required to report the acquisition information required by paragraph (d)(2)(i)(D) of this section. Finally, because TP provided the purchase information with respect to the transferred in units to BEX, the units determined as sold by BEX are the same units that TP must treat as sold under § 1.1012–1(j)(3)(i). See § 1.1012–1(j)(5)(iv) (*Example 4*).

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(4) *Sale date*—(i) *In general*. For sales of property that are reportable under this section other than digital assets, a broker must report a sale as occurring on the date the sale is entered on the books of the broker.

(ii) *Special rules for digital asset sales*. For sales of digital assets that are effected when digitally recorded using cryptographically secured distributed ledger technology, such as a blockchain or similar technology, the broker must report the date of sale as the date when the transactions are recorded on the ledger. For sales of digital assets that are effected by a broker and recorded in the broker's books and records (commonly referred to as an *off-chain* transaction) and not directly on a distributed ledger or similar technology, the broker must report the date of sale as the date when the transactions are recorded on its books and records without regard to the date that the transactions may be later recorded on the distributed ledger or similar technology.

(5) *Gross proceeds*—(i) *In general*. Except as otherwise provided in paragraph (d)(5)(ii) of this section with respect to digital asset sales, for purposes of this section, *gross proceeds* on a sale are the total amount paid to the customer or credited to the customer's account as a result of the sale reduced by the amount of any qualified stated interest reported under paragraph (d)(3) of this section and increased by

any amount not paid or credited by reason of repayment of margin loans. In the case of a closing transaction (other than a closing transaction related to an option) that results in a loss, gross proceeds are the amount debited from the customer's account. For sales before January 1, 2014, a broker may, but is not required to, reduce gross proceeds by the amount of commissions and transfer taxes, provided the treatment chosen is consistent with the books of the broker. For sales on or after January 1, 2014, a broker must reduce gross proceeds by the amount of commissions and transfer taxes related to the sale of the security. For securities sold pursuant to the exercise of an option granted or acquired before January 1, 2014, a broker may, but is not required to, take the option premiums into account in determining the gross proceeds of the securities sold, provided the treatment chosen is consistent with the books of the broker. For securities sold pursuant to the exercise of an option granted or acquired on or after January 1, 2014, or for the treatment of an option granted or acquired on or after January 1, 2014, see paragraph (m) of this section. A broker must report the gross proceeds of identical stock (within the meaning of § 1.1012–1(e)(4)) by averaging the proceeds of each share if the stock is sold at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation to the customer that reports an aggregate total price or an average price per share. However, a broker may not average the proceeds if the customer notifies the broker in writing of an intent to determine the proceeds of the stock by the actual proceeds per share and the broker receives the notification by January 15 of the calendar year following the year of the sale. A broker may extend the January 15 deadline but not beyond the due date for filing the return required under this section.

(ii) *Sales of digital assets*. The rules contained in paragraphs (d)(5)(ii)(A) and (B) of this section apply solely for purposes of this section.

(A) *Determining gross proceeds*. Except as otherwise provided in this section, gross proceeds from the sale of a digital asset are equal to the sum of the total cash paid to the customer or credited to the customer's account from the sale plus the fair market value of any property or services received (including services giving rise to digital asset transaction costs), reduced by the amount of digital asset transaction costs, as defined and allocated under paragraph (d)(5)(iv) of this section. In the case of a debt instrument issued in

exchange for the digital asset and subject to § 1.1001–1(g), the amount realized attributable to the debt instrument is determined under § 1.1001–7(b)(1)(iv) rather than by reference to the fair market value of the debt instrument. See paragraph (d)(5)(iv)(C) of this section for a special rule setting forth how cascading digital asset transaction costs are to be allocated in certain exchanges of one digital asset for a different digital asset.

(1) *Determining fair market value*.

Fair market value is measured at the date and time the transaction was effected. Except as provided in the next sentence, in determining the fair market value of services or property received or credited in exchange for a digital asset, the broker must use a reasonable valuation method that looks to contemporaneous evidence of value, such as the purchase price of the services, goods or other property, the exchange rate, and the U.S. dollar valuation applied by the broker to effect the exchange. In determining the fair market value of services giving rise to digital asset transaction costs, the broker must look to the fair market value of the digital assets used to pay for such transaction costs. In determining the fair market value of a digital asset, the broker may perform its own valuations or rely on valuations performed by a digital asset data aggregator as defined in paragraph (d)(5)(ii)(B) of this section, provided such valuations apply a reasonable valuation method for digital assets as described in paragraph (d)(5)(ii)(A)(3) of this section.

(2) *Consideration value not readily ascertainable*. When valuing services or property (including digital assets) received in exchange for a digital asset, the value of what is received should ordinarily be identical to the value of the digital asset exchanged. If there is a disparity between the value of services or property received and the value of the digital asset exchanged, the gross proceeds received by the customer is the fair market value at the date and time the transaction was effected of the services or property, including digital assets, received. If the broker or digital asset data aggregator, in the case of digital assets, reasonably determines that the fair market value of the services or property received cannot be determined with reasonable accuracy, the fair market value of the received services or property must be determined by reference to the fair market value of the transferred digital asset at the time of the exchange. See § 1.1001–7(b)(4). If the broker or digital asset data aggregator, in the case of a digital asset, reasonably determines that neither the

value of the received services or property nor the value of the transferred digital asset can be determined with reasonable accuracy, the broker must report that the received services or property has an undeterminable value.

(3) *Reasonable valuation method for digital assets.* A reasonable valuation method for digital assets is a method that considers and appropriately weighs the pricing, trading volumes, market capitalization and other factors relevant to the valuation of digital assets traded through digital asset trading platforms. A valuation method is not a reasonable valuation method for digital assets if it, for example, gives an underweight effect to exchange prices lying near the median price value, an overweight effect to digital asset trading platforms having low trading volume, or otherwise inappropriately weighs factors associated with a price that would make that price an unreliable indicator of value.

(B) *Digital asset data aggregator.* A digital asset data aggregator is an information service provider that provides valuations of digital assets based on any reasonable valuation method.

(iii) *Digital asset transactions effected by processors of digital asset payments.* The amount of gross proceeds under paragraph (d)(5)(ii) of this section received by a party who sells a digital asset under paragraph (a)(9)(ii)(D) of this section (effected by a processor of digital asset payments) is equal to: the sum of the amount paid in cash, and the fair market value of the amount paid in digital assets by that processor to a second party, plus any digital asset transaction costs and other fees charged to the second party that are withheld (whether withheld from the digital assets transferred by the first party or withheld from the amount due to the second party); and reduced by the amount of digital asset transaction costs paid by or withheld from the first party, as defined and allocated under the rules of paragraph (d)(5)(iv) of this section.

(iv) *Definition and allocation of digital asset transaction costs—(A) Definition.* The term *digital asset transaction costs* means the amount paid in cash or property (including digital assets) to effect the sale, disposition, or acquisition of a digital asset. Digital asset transaction costs include transaction fees, transfer taxes, and commissions.

(B) *General allocation rule.* Except as provided in paragraph (d)(5)(iv)(C) of this section, in the case of a sale or disposition of digital assets, the total digital asset transaction costs paid by

the customer are allocable to the sale or disposition of the digital assets.

(C) *Special rule for allocation of certain cascading digital asset transaction costs.* In the case of a sale of one digital asset in exchange for another digital asset differing materially in kind or in extent (original transaction) and for which digital assets received in the original transaction are withheld to pay digital asset transaction costs, the total digital asset transaction costs paid by the taxpayer to effect both the original transaction and the disposition of the withheld digital assets are allocable exclusively to the disposition of digital assets in the original transaction.

(v) *Examples.* The following examples illustrate the rules of this paragraph (d)(5). Unless otherwise indicated, all events and transactions in the following examples occur on or after January 1, 2025.

(A) *Example 1: Determination of gross proceeds when digital asset transaction costs paid in digital assets—(1) Facts.* CRX, a digital asset broker, buys, sells, and exchanges various digital assets for cash or different digital assets on behalf of its customers. For this service, CRX charges a transaction fee equal to 1 unit of CRX's proprietary digital asset CM per transaction. Using the services of CRX, customer K, an individual not otherwise exempt from reporting, purchases 15 units of CM and 10 units of digital asset DE. On April 28, Year 1, when the CM units have a value of \$2 per unit, the DE units have a value of \$8 per unit, and digital asset ST units have a value of \$0.80 per unit, K instructs CRX to exchange K's 10 units of DE for 100 units of digital asset ST. CRX charges K one unit of CM as a transaction fee for the exchange.

(2) *Analysis.* Under paragraph (d)(5)(iv)(A) of this section, K has digital asset transaction costs of \$2, which is the value of 1 CM unit. Under paragraph (d)(5)(ii)(A) of this section, the gross proceeds amount that CRX must report from K's sale of the 10 units of DE is equal to the fair market value of the 100 units of ST that K received (less the value of the CM unit sold to pay the digital asset transaction cost to CRX and allocable to the sale of the DE units). The fair market value of the 100 units of ST at the date and time the transaction was effected is equal to \$80 (the product of \$0.80 and 100 units). Accordingly, CRX must report gross proceeds of \$78 from K's sale of the 10 units of DE. CRX must also report the gross proceeds from K's sale of one CM unit to pay for CRX's services. Under paragraph (d)(5)(ii)(A) of this section, the gross proceeds from K's sale of one unit of CM is equal to the fair market value of the digital assets used to pay for such transaction costs. Accordingly, CRX must report \$2 as gross proceeds from K's sale of one unit of CM.

(B) *Example 2: Determination of gross proceeds when digital asset transaction costs are withheld from transferred digital assets—(1) Facts.* K owns a total of 10 units of digital

asset A that K deposits with broker BEX that provides custodial services for digital assets. K directs BEX to effect the exchange of 10 units of K's digital asset A for 20 units of digital asset B. At the time of the exchange, each unit of digital asset A has a fair market value of \$2 and each unit of digital asset B has a fair market value of \$1. BEX charges a fee of \$2 per transaction, which BEX withholds from the units of the digital asset A transferred. At the time of the transaction, BEX withholds 1 unit of digital asset A. TP exchanges the remaining 9 units of digital asset A for 18 units of digital asset B.

(2) *Analysis.* The withholding of 1 unit of digital asset A is a sale of a digital asset for BEX's services within the meaning of paragraph (a)(9)(ii)(C) of this section. Under paragraph (d)(5)(iv)(A) of this section, K has digital asset transaction costs of \$2. Under paragraph (d)(5)(iv)(C) of this section, TP must allocate such costs to the disposition of the 10 units of digital asset A. Under paragraphs (d)(5)(ii)(A) and (d)(5)(iv)(C) of this section, TP's gross proceeds from the sale of the 10 units of digital asset A is \$18, which is the excess of the fair market value of the 18 units of digital asset B received (\$18) and the fair market value of the broker services received (\$2) as of the date and time of the transaction over the allocated digital asset transaction costs (\$2). Accordingly, BEX must report \$18 as gross proceeds from K's sale of 10 units of digital asset A.

(C) *Example 3: Determination of gross proceeds when digital asset transaction costs are withheld from acquired digital assets in an exchange of digital assets—(1) Facts.* The facts are the same as in paragraph (d)(5)(v)(B)(1) of this section (the facts in *Example 2*), except that BEX requires its payment be withheld from the units of the digital asset acquired. At the time of the transaction, BEX withholds 3 units of digital asset B, two units of which effect the exchange of digital asset A for digital asset B and one unit of which effects the disposition of digital asset B for payment of the transaction fees.

(2) *Analysis.* The withholding of 3 units of digital asset B is a disposition of digital assets for BEX's services within the meaning of paragraph (a)(9)(ii)(C) of this section. Under paragraph (d)(5)(iv)(A) of this section, K has digital asset transaction costs of \$3. Under paragraph (d)(5)(iv)(C) of this section, K must allocate such costs to the disposition of the 10 units of digital asset A. Under paragraphs (d)(5)(ii)(A) and (d)(5)(iv)(C) of this section, K's gross proceeds from the sale of the 10 units of digital asset A is \$17, which is the excess of the fair market value of the 20 units of digital asset B received (\$20) as of the date and time of the transaction over the allocated digital asset transaction costs (\$3). K's gross proceeds from the sale of the 3 units of digital asset B used to pay digital asset transaction costs is \$3, which is the fair market value of BEX's services received at the time of the transaction. Accordingly, BEX must report \$17 as gross proceeds from K's sale of 10 units of digital asset A. Additionally, pursuant to paragraph (c)(3)(ii)(C) of this section, BEX is not required to report K's sale of the 3 withheld units of digital asset B because the 3 units of

digital asset B were units withheld from digital assets received by K to pay for K's digital asset transaction costs.

(D) *Example 4: Determination of gross proceeds—(1) Facts.* CPP, a processor of digital asset payments, offers debit cards to its customers who hold digital asset FE in their accounts with CPP. The debit cards allow CPP's customers to use digital assets held in accounts with CPP to make payments to merchants who do not accept digital assets. CPP charges its card holders a 2% transaction fee for purchases made using the debit card and sets forth in its terms and conditions the process CPP will use to determine the exchange rate provided at the date and time of its customers' transactions. CPP has issued a debit card to B, an individual not otherwise exempt from reporting, who wants to make purchases using digital assets. B transfers 1,000 units of FE into B's account with CPP. B then uses the debit card to purchase merchandise from a U.S. merchant STR for \$1,000. An exchange rate of 1 FE = \$2 USD is applied to effect the transaction, based on the exchange rate at that date and time and pursuant to B's account agreement. To settle the transaction, CPP removes 510 units of FE from B's account equal to \$1,020 (\$1,000 plus a 2% transaction fee equal to \$20). CPP then pays STR \$1,000 in cash.

(2) *Analysis.* B paid \$20 of digital asset transaction costs as defined in paragraph (d)(5)(iv)(A) of this section. Under paragraph (d)(5)(iii) of this section, the gross proceeds amount that CPP must report with respect to B's sale of the 510 units of FE to purchase the merchandise is \$1,000, which is the sum of the amount of cash paid by CPP to STR plus the \$20 digital asset transaction costs withheld by CPP, reduced by the \$20 digital asset transaction costs as allocated under paragraph (d)(5)(iv)(B) of this section. CPP's payment of cash to STR is also a payment card transaction under § 1.6050W-1(b) subject to reporting under § 1.6050W-1(a).

(E) *Example 5: Determination of gross proceeds—(1) Facts.* STR, a U.S. merchant corporation, advertises that it accepts digital asset FE as payment for its merchandise that is not digital assets. Customers making purchases at STR using digital asset FE are directed to create an account with CXX, a processor of digital asset payments, which, pursuant to a preexisting agreement with STR, accepts digital asset FE in return for payments in cash made to STR. CXX charges a 2% transaction fee, which is paid by STR and not STR's customers. S, an individual not otherwise exempt from reporting, seeks to purchase merchandise from STR for \$10,000. To effect payment, S is directed by STR to CXX, with whom S has an account. An exchange rate of 1 FE = \$2 USD is applied to effect the purchase transaction. Pursuant to this exchange rate, S then transfers 5,000 units of FE to CXX, which, in turn, pays STR \$9,800 (\$10,000 less a 2% transaction fee equal to \$200).

(2) *Analysis.* Under paragraph (d)(5)(iii) of this section, the gross proceeds amount that CXX must report with respect to this sale is \$10,000, which is the sum of the amount in U.S. dollars paid by CPP to STR (\$9,800) plus the \$200 digital asset transaction costs

withheld from the payment due to STR. Because S does not have any digital asset transaction costs, the \$9,800 amount is not reduced by any digital asset transaction costs charged to STR because that fee was not paid by S. In addition, CXX's payment of cash to STR (plus the withheld transaction fee) may be reportable under § 1.6050W-1(a) as a third party network transaction under § 1.6050W-1(c) if CXX is a third party settlement organization under the definition in § 1.6050W-1(c)(2).

(F) *Example 6: Determination of gross proceeds in a real estate transaction—(1) Facts.* J, an unmarried individual not otherwise exempt from reporting, enters into a contractual agreement with B, an individual not otherwise exempt from reporting, to exchange J's principal residence, Blackacre, which has a fair market value of \$300,000, for cash in the amount of \$75,000 and units of digital asset DE with a value of \$225,000. Prior to closing, B transfers the digital asset portion of the payment directly from B's wallet to J's wallet. At closing, J certifies to the closing agent (CA) that J received the DE units required to be paid under the contractual agreement. CA is also a real estate reporting person under § 1.6045-4, and a digital asset middleman under paragraph (a)(21) of this section with respect to the transaction.

(2) *Analysis.* CA is required to report on Form 1099-DA the gross proceeds received by B in exchange for B's sale of digital assets in this transaction. The gross proceeds amount to be reported under paragraph (d)(5)(ii)(A) of this section is equal to \$225,000, which is the \$300,000 value of Blackacre less \$75,000 that B paid in cash. In addition, under § 1.6045-4, CA is required to report on Form 1099-S the \$300,000 of gross proceeds received by J (\$75,000 cash and \$225,000 in digital assets) as consideration for J's disposition of Blackacre.

(6) * * *

(i) *In general.* For purposes of this section, the adjusted basis of a specified security is determined from the initial basis under paragraph (d)(6)(ii) of this section as of the date the specified security is acquired in an account, increased by the commissions and transfer taxes related to its sale to the extent not accounted for in gross proceeds as described in paragraph (d)(5) of this section. A broker is not required to consider transactions or events occurring outside the account except for an organizational action taken by an issuer of a specified security other than a digital asset during the period the broker holds custody of the security (beginning with the date that the broker receives a transferred security) reported on an issuer statement (as described in § 1.6045B-1) furnished or deemed furnished to the broker. Except as otherwise provided in paragraph (n) of this section, a broker is not required to consider customer elections. For rules related to the adjusted basis of a debt

instrument, see paragraph (n) of this section.

(ii) *Initial basis—(A) Cost basis for specified securities acquired for cash.* For a specified security acquired for cash, the initial basis generally is the total amount of cash paid by the customer or credited against the customer's account for the specified security, increased by the commissions, transfer taxes, and digital asset transaction costs related to its acquisition. A broker may, but is not required to, take option premiums into account in determining the initial basis of securities purchased or acquired pursuant to the exercise of an option granted or acquired before January 1, 2014. For rules related to options granted or acquired on or after January 1, 2014, see paragraph (m) of this section. A broker may, but is not required to, increase initial basis for income recognized upon the exercise of a compensatory option or the vesting or exercise of other equity-based compensation arrangements, granted or acquired before January 1, 2014. A broker may not increase initial basis for income recognized upon the exercise of a compensatory option or the vesting or exercise of other equity-based compensation arrangements, granted or acquired on or after January 1, 2014, or upon the vesting or exercise of a digital asset-based compensation arrangement granted or acquired on or after January 1, 2025. A broker must report the basis of identical stock (within the meaning of § 1.1012-1(e)(4)) by averaging the basis of each share if the stock is purchased at separate times on the same calendar day in executing a single trade order and the broker executing the trade provides a single confirmation to the customer that reports an aggregate total price or an average price per share. However, a broker may not average the basis if the customer timely notifies the broker in writing of an intent to determine the basis of the stock by the actual cost per share in accordance with § 1.1012-1(c)(1)(ii).

(B) *Basis of transferred securities—(1) In general.* The initial basis of a security transferred to an account is generally the basis reported on the transfer statement (as described in § 1.6045A-1).

(2) *Securities acquired by gift.* If a transfer statement indicates that the security is acquired as a gift, a broker must apply the relevant basis rules for property acquired by gift in determining the initial basis, but is not required to adjust basis for gift tax. A broker must treat the initial basis as equal to the gross proceeds from the sale determined under paragraph (d)(5) of this section if the relevant basis rules for property

acquired by gift prevent recognizing both gain and loss, or if the relevant basis rules treat the initial basis of the security as its fair market value as of the date of the gift and the broker neither knows nor can readily ascertain this value. If the transfer statement did not report a date for the gift, the broker must treat the settlement date for the transfer as the date of the gift.

(C) *Digital assets acquired in exchange for property*—(1) *In general.* This paragraph (d)(6)(ii)(C) applies solely for purposes of this section. For a digital asset acquired in exchange for property that is not a debt instrument described in § 1.1012-1(h)(1)(v) or another digital asset differing materially in kind or extent, the initial basis of the digital asset is the fair market value of the digital asset received at the time of the exchange, increased by any digital asset transaction costs allocable to the acquisition of the digital asset. The fair market value of the digital asset received must be determined using a reasonable valuation method as of the date and time the exchange transaction was effected. In valuing the digital asset received, the broker may perform its own valuations or rely on valuations performed by a digital asset data aggregator as defined in paragraph (d)(5)(ii)(B) of this section, provided such valuations apply a reasonable valuation method for digital assets as described in paragraph (d)(5)(ii)(A)(3) of this section. If the broker or digital asset data aggregator reasonably determines that the fair market value of the digital asset received cannot be determined with reasonable accuracy, the fair market value of the digital asset received must be determined by reference to the property transferred at the time of the exchange. If the broker or digital asset data aggregator reasonably determines that neither the value of the digital asset received nor the value of the property transferred can be determined with reasonable accuracy, the fair market value of the received digital asset must be treated as zero. For a digital asset acquired in exchange for another digital asset differing materially in kind or extent, see paragraph (d)(6)(ii)(C)(2) of this section. For a digital asset acquired in exchange for a debt instrument described in § 1.1012-1(h)(1)(v), the initial basis of the digital asset attributable to the debt instrument is the amount determined under § 1.1012-1(h)(1)(v).

(2) *Allocation of digital asset transaction costs.* Except as provided in the following sentence, in the case of a sale of one digital asset in exchange for another digital asset differing materially

in kind or extent, the total digital asset transaction costs paid by the customer are allocable to the digital assets disposed. In the case of a transaction described in paragraph (d)(5)(iv)(C) of this section, the digital asset transaction costs paid by the customer to acquire the digital assets received are allocable as provided therein.

(iii) * * *

(A) *Securities in the same account or wallet*—(1) *In general.* A broker must apply the wash sale rules under section 1091 if both the sale and purchase transactions are of covered securities, other than covered securities reportable as digital assets after the application of paragraph (c)(8) of this section, with the same CUSIP number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter). When reporting the sale transaction that triggered the wash sale, the broker must report the amount of loss that is disallowed by section 1091 in addition to gross proceeds and adjusted basis. The broker must increase the basis of the purchased covered security by the amount of loss disallowed on the sale transaction.

(2) *Special rules for covered securities that are also digital assets.* In the case of a purchase or sale of a tokenized security described in paragraph (c)(8)(i)(D) of this section that is a stock or security for purposes of section 1091, a broker must apply the wash sale rules under section 1091 if both the sale and purchase transactions are of covered securities with the same CUSIP number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter). When reporting the sale transaction that triggered the wash sale, the broker must report the amount of loss that is disallowed by section 1091 in addition to gross proceeds and adjusted basis. The broker must increase the basis of the purchased covered security by the amount of loss disallowed on the sale transaction.

(B) *Covered securities in different accounts or wallets.* A broker is not required to apply paragraph (d)(6)(iii)(A) of this section if the covered securities are purchased and sold from different accounts or wallets, if the purchased covered security is transferred to another account or wallet before the wash sale, or if the covered securities are treated as held in separate accounts under § 1.1012-1(e). A covered security is not purchased in an account or wallet if it is purchased in another

account or wallet and transferred into the account or wallet.

* * * * *

(v) *Average basis method adjustments.* For a covered security for which basis may be determined by the average basis method, a broker must compute basis using the average basis method if a customer validly elects that method for the covered securities sold or, in the absence of any instruction from the customer, if the broker chooses that method as its default basis determination method. See § 1.1012-1(e). The previous sentence applies to any stock that is also a tokenized security described in paragraph (c)(8)(i)(D) of this section.

* * * * *

(x) *Examples.* The following examples illustrate the rules of paragraph (d)(5) of this section and this paragraph (d)(6) as applied to digital assets. Unless otherwise indicated, all events and transactions in the following examples occur using the services of CRX, an entity that owns and operates a digital asset trading platform and provides digital asset broker and hosted wallet services. In performing these services, CRX holds and records all customer purchase and sale transactions using CRX's centralized omnibus account. CRX does not record any of its customer's purchase or sale transactions on the relevant cryptographically secured distributed ledgers. Additionally, unless otherwise indicated, all events and transactions in the following examples occur on or after January 1, 2026.

(A) *Example 1: Determination of gross proceeds and basis in digital assets*—(1) *Facts.* As a digital asset broker, CRX generally charges transaction fees equal to 1 unit of CRX's proprietary digital asset CM per transaction. CRX does not, however, charge transaction fees for the purchase of CM. On March 9, Year 1, K, an individual not otherwise exempt from reporting, purchases 20 units of CM for \$20 in cash in K's account at CRX. A week later, on March 16, Year 1, K uses CRX's services to purchase 10 units of digital asset DE for \$80 in cash. To pay for CRX's transaction fee, K directs CRX to debit 1 unit of CM (worth \$1 at the time of transfer) from K's account.

(2) *Analysis.* Under paragraph (d)(2)(i)(B) of this section, CRX must report the gross proceeds from K's sale of 1 unit of CM. Additionally, because the units of CM were purchased in K's account at a broker providing custodial services for digital assets that are specified securities described in paragraph (a)(14)(v) of this section, the units of CM purchased by K are covered securities under paragraph (a)(15)(i)(I) of this section. Accordingly, under paragraphs (d)(2)(i)(D)(1) and (2) of this section, CRX must report K's adjusted basis in the 1 unit of CM and whether any gain or loss with respect to the

CM unit sold is long-term or short-term. The gross proceeds from that sale is equal to the fair market value of the CM units on March 16, Year 1 (\$1), and the adjusted basis of that unit is equal to the amount K paid in cash for the CM unit on March 9, Year 1 (\$1). This reporting is required regardless of the fact that there is \$0 of gain or loss associated with this sale. Additionally, K's adjusted basis in the 10 units of DE acquired is equal to the \$81 initial basis in DE, which is \$80 plus the \$1 value of 1 unit of CM paid as a digital asset transaction cost for the purchase of the DE units.

(B) *Example 2: Determination of gross proceeds and basis in digital assets—(1) Facts.* The facts are the same as in paragraph (d)(6)(x)(A)(1) of this section (the facts in *Example 1*), except that on June 12, Year 2, K instructs CRX to exchange K's 10 units of DE for 50 units of digital asset ST. CRX effects this exchange using its own omnibus account holdings of ST at an exchange rate of 1 DE = 5 ST. The total value of the 50 units of ST received by K is \$100. K directs CRX to debit 1 CM unit (worth \$2 at the time of the transfer) from K's account to pay CRX for the transaction fee.

(2) *Analysis.* K has digital asset transaction costs of \$2 as defined in paragraph (d)(5)(iv)(A) of this section, which is the value of 1 unit of CM. Under paragraph (d)(2)(i)(B) of this section, CRX must report the gross proceeds from K's exchange of DE for ST (as a sale of K's 10 units of DE) and the gross proceeds from K's disposition of 1 unit of CM for CRX's services. Additionally, because the units of DE and CM were purchased in K's account at a broker providing custodial services for digital assets that are specified securities described in paragraph (a)(14)(v) of this section, the units of DE and CM are covered securities under paragraph (a)(15)(i)(I) of this section, and, pursuant to paragraphs (d)(2)(i)(D)(1) and (2) of this section, CRX must report K's adjusted basis in the 10 units of DE and 1 unit of CM and whether any gain or loss with respect to those units is long-term or short-term. Under paragraph (d)(5)(ii)(A) of this section, the gross proceeds from K's sale of the DE units is \$98 (the fair market value of the 50 units of ST that K received less the \$2 digital asset transaction costs paid by K using 1 unit of CM), that is allocable to the sale of the DE units. Under this paragraph (d)(6), K's adjusted basis in the 10 units of DE is \$81 (which is \$80 plus the \$1 value of 1 unit of CM paid as a digital asset transaction cost for the purchase of the DE units), resulting in a long-term capital gain to K of \$17 (\$98–\$81). The gross proceeds from K's sale of the single unit of CM is \$2, and K's adjusted basis in the single unit of CM is \$1, resulting in a long-term capital gain to K of \$1 (\$2–\$1). K's adjusted basis in the ST units under paragraph (d)(6)(ii)(C) of this section is equal to the initial basis in ST, which is \$100.

(C) *Example 3: Determination of gross proceeds and basis when digital asset transaction costs are withheld from transferred digital assets—(1) Facts.* K has an account with digital asset broker BEX. On December 20, Year 1, K acquired 10 units of digital asset A, for \$2 per unit, and 100 units of digital asset B, for \$0.50 per unit. (Assume

that K did not incur any digital asset transaction costs on the units acquired on December 20, Year 1.) On July 20, Year 2, K directs BEX to effect the exchange of 10 units of digital asset A for 50 units of digital asset B. At the time of the exchange, each unit of digital asset A has a fair market value of \$5 per unit and each unit of digital asset B has a fair market value of \$1 per unit. For the exchange of 10 units of digital asset A for 50 units of digital asset B, BEX charges K a transaction fee equal to 2 units of digital asset B, which BEX withholds from the units of the digital asset B credited to K's account on July 20, Year 2. For the disposition of 2 units of digital asset B withheld, BEX charges an additional transaction fee equal to 1 unit of digital asset B, which BEX also withholds from the units of digital asset B credited to K's account on July 20, Year 2. K has a standing order with BEX for the specific identification of digital assets as from the earliest units acquired.

(2) *Reporting with respect to the disposition of the A units.* The withholding of 3 units of digital asset B is a disposition of digital assets for BEX's services within the meaning of paragraph (a)(9)(ii)(C) of this section. Under paragraph (d)(5)(iv)(A) of this section, K has digital asset transaction costs of \$3. Under paragraph (d)(5)(iv)(C) of this section, the exchange of 10 units of digital asset A for 50 units of digital asset B is the original transaction. Accordingly, BEX must allocate the digital asset transaction costs of \$3 exclusively to the disposition of the 10 units of digital asset A. Additionally, because the units of A are specified securities described in paragraph (a)(14)(v) of this section and were purchased in K's account at BEX by a broker providing custodial services for such specified securities, the units of A are covered securities under paragraph (a)(15)(i)(I) of this section, and BEX must report K's adjusted basis in the 10 units of A. Under paragraphs (d)(5)(ii)(A) and (d)(5)(iv)(C) of this section, K's gross proceeds from the sale of the 10 units of digital asset A is \$47, which is the excess of the fair market value of the 50 units of digital asset B received (\$50) as of the date and time of the transaction over the allocated digital asset transaction costs (\$3). Under this paragraph (d)(6), K's adjusted basis in the 10 units of A is \$20, resulting in a short-term capital gain to K of \$27 (\$47–\$20).

(3) *Reporting with respect to the disposition of the withheld B units.* K's gross proceeds from the sale of the 3 units of digital asset B used to pay digital asset transaction costs is \$3, which is the fair market value of the digital assets used to pay for such transaction costs. Pursuant to the special rule for the identification of units withheld from digital assets received in a transaction to pay a customer's digital asset transaction costs under paragraph (d)(2)(ii)(B)(3) of this section and regardless of K's standing order, the withheld units sold are treated as from the units received in the original (A for B) transaction. Accordingly, the basis of the 3 withheld units of digital asset B is \$3, which is the fair market value of the 3 units of digital asset B received. Finally, pursuant to paragraph (c)(3)(ii)(C) of this section, BEX is not required to report K's

sale of the 3 withheld units of digital asset B because the 3 units of digital asset B were units withheld from digital assets received by K to pay for K's digital asset transaction costs.

(D) *Example 4: Determination of gross proceeds and basis for digital assets—(1) Facts.* On August 26, Year 1, Customer P purchases 10 units of digital asset DE for \$2 per unit in cash in an account at CRX. CRX charges P a fixed transaction fee of \$5 in cash for the exchange. On October 26, Year 2, P directs CRX to exchange P's 10 units of DE for units of digital asset FG. At the time of the exchange, CRX determines that each unit of DE has a fair market value of \$100 and each unit of FG has a fair market value of \$50. As a result of this determination, CRX effects an exchange of P's 10 units of DE for 20 units of FG. CRX charges P a fixed transaction fee of \$20 in cash for the exchange.

(2) *Analysis.* Under paragraph (d)(5)(iv)(B) of this section, P has digital asset transaction costs of \$20 associated with the exchange of DE for FG which must be allocated to the sale of the DE units. For the transaction that took place on October 26, Year 2, under paragraph (d)(2)(i)(B) of this section, CRX must report the amount of gross proceeds from the sale of DE in the amount of \$980 (the \$1,000 fair market value of FG received on the date and time of transfer, less all of the digital asset transaction costs of \$20 allocated to the sale). Under paragraph (d)(6)(ii)(C) of this section, the adjusted basis of P's DE units is equal to \$25, which is the \$20 paid in cash for the 10 units increased by the \$5 digital asset transaction costs allocable to that purchase. Finally, P's adjusted basis in the 20 units of FG is equal to the fair market value of the FG received, \$1,000, because none of the \$20 transaction fee may be allocated under paragraph (d)(6)(ii)(C)(2) of this section to the acquisition of P's FG units.

(7) * * *

(i) *In general.* In determining whether any gain or loss on the sale of a covered security is long-term or short-term within the meaning of section 1222 for purposes of this section, the following rules apply:

(A) A broker must consider the information reported on a transfer statement (as described in § 1.6045A–1).

(B) A broker is not required to consider transactions, elections, or events occurring outside the account except for an organizational action taken by an issuer during the period the broker holds custody of the covered security (beginning with the date that the broker receives a transferred security) reported on an issuer statement (as described in § 1.6045B–1) furnished or deemed furnished to the broker.

(C) A broker is required to apply the relevant rules for property acquired from a decedent or by gift for all covered securities.

(ii) * * *

(A) *Securities in the same account or wallet—(1) In general.* A broker must apply the wash sale rules under section 1091 if both the sale and purchase transactions are of covered securities, other than covered securities reportable as digital assets after the application of paragraph (c)(8) of this section, with the same CUSIP number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(2) *Special rules for covered securities that are also digital assets.* In the case of a purchase or sale of a tokenized security described in paragraph (c)(8)(i)(D) of this section that is a stock or security for purposes of section 1091, a broker must apply the wash sale rules under section 1091 if both the sale and purchase transactions are of covered securities with the same CUSIP number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(B) *Covered securities in different accounts or wallets.* A broker is not required to apply paragraph (d)(7)(ii)(A) of this section if the covered securities are purchased and sold from different accounts or wallets, if the purchased covered security is transferred to another account or wallet before the wash sale, or if the covered securities are treated as held in separate accounts under § 1.1012–1(e). A covered security is not purchased in an account or wallet if it is purchased in another account or wallet and transferred into the account or wallet.

* * * * *

(9) *Coordination with the reporting rules for widely held fixed investment trusts under § 1.671–5.* Information required to be reported under section 6045(a) for a sale of a security or a digital asset in a widely held fixed investment trust (WHFIT) (as defined under § 1.671–5) and the sale of an interest in a WHFIT must be reported as provided by this section unless the information is also required to be reported under § 1.671–5. To the extent that this section requires additional information under section 6045(g), those requirements are deemed to be met through compliance with the rules in § 1.671–5.

(10) *Optional reporting methods for qualifying stablecoins and specified nonfungible tokens.* This paragraph (d)(10) provides optional reporting rules for sales of qualifying stablecoins as defined in paragraph (d)(10)(ii) of this

section and sales of specified nonfungible tokens as defined in paragraph (d)(10)(iv) of this section. A broker may report sales of qualifying stablecoins or report sales of specified nonfungible tokens under the optional method provided in this paragraph (d)(10) instead of under paragraphs (d)(2)(i)(B) and (D) of this section for some or all customers and may change its reporting method for any customer from year to year; however, the method chosen for a particular customer must be applied for the entire year of that customer's sales.

(i) *Optional reporting method for qualifying stablecoins—(A) In general.* In lieu of reporting all sales of qualifying stablecoins under paragraphs (d)(2)(i)(B) and (D) of this section, a broker may report designated sales of qualifying stablecoins, as defined in paragraph (d)(10)(i)(C) of this section, on an aggregate basis as provided in paragraph (d)(10)(i)(B) of this section. A broker reporting under this paragraph (d)(10)(i) is not required to report sales of qualifying stablecoins under this paragraph (d)(10)(i) or under paragraphs (d)(2)(i)(B) through (D) of this section if such sales are non-designated sales of qualifying stablecoins or if the gross proceeds (after reduction for the allocable digital asset transaction costs) from all designated sales effected by that broker of qualifying stablecoins by the customer do not exceed \$10,000 for the year as described in paragraph (d)(10)(i)(B) of this section.

(B) *Aggregate reporting method for designated sales of qualifying stablecoins.* If a customer's aggregate gross proceeds (after reduction for the allocable digital asset transaction costs) from all designated sales effected by that broker of qualifying stablecoins exceed \$10,000 for the year, the broker must make a separate return for each qualifying stablecoin that includes the information set forth in this paragraph (d)(10)(i)(B). If the aggregate gross proceeds reportable under the previous sentence exceed \$10,000, reporting is required with respect to each qualifying stablecoin for which there are designated sales even if the aggregate gross proceeds for a particular qualifying stablecoin does not exceed \$10,000. A broker reporting under this paragraph (d)(10)(i)(B) must report the following information with respect to designated sales of each qualifying stablecoin on a separate Form 1099-DA or any successor form in the manner required by such form or instructions—

- (1) The name, address, and taxpayer identification number of the customer;
- (2) The name of the qualifying stablecoin sold;

(3) The aggregate gross proceeds for the year from designated sales of the qualifying stablecoin (after reduction for the allocable digital asset transaction costs as defined and allocated pursuant to paragraph (d)(5)(iv) of this section);

(4) The total number of units of the qualifying stablecoin sold in designated sales of the qualifying stablecoin;

(5) The total number of designated sale transactions of the qualifying stablecoin; and

(6) Any other information required by the form or instructions.

(C) *Designated sale of a qualifying stablecoin.* For purposes of this paragraph (d)(10), the term *designated sale of a qualifying stablecoin* means: any sale as defined in paragraphs (a)(9)(ii)(A) through (D) of this section of a qualifying stablecoin other than a sale of a qualifying stablecoin in exchange for different digital assets that are not qualifying stablecoins. In addition, the term *designated sale of a qualifying stablecoin* includes the delivery of a qualifying stablecoin pursuant to the settlement of any executory contract which would be treated as a designated sale of the qualifying digital asset under the previous sentence if the contract had not been executory. Finally, the term *non-designated sale of a qualifying stablecoin* means any sale of a qualifying stablecoin other than a designated sale of a qualifying stablecoin as defined in this paragraph (d)(10)(i)(C).

(D) *Examples.* For purposes of the following examples, assume that digital asset WW and digital asset YY are qualifying stablecoins, and digital asset DL is not a qualifying stablecoin. Additionally, assume that the transactions set forth in each example include all sales of qualifying stablecoins on behalf of the customer during Year 1, and that no transaction costs were imposed on the sales described therein.

(1) *Example 1: Optional reporting method for qualifying stablecoins—(i) Facts.* CRX is a digital asset broker that provides services to customer K, an individual not otherwise exempt from reporting. CRX effects the following sales on behalf of K: sale of 1,000 units of WW in exchange for cash of \$1,000; sale of 5,000 units of WW in exchange for YY, with a value of \$5,000; sale of 10,000 units of WW in return for DL, with a value of \$10,000; and sale of 3,000 units of YY in exchange for cash of \$3,000.

(ii) *Analysis.* In lieu of reporting all of K's sales of WW and YY under paragraph (d)(2)(i)(B) of this section, CRX may report K's designated sales of WW and YY under the optional reporting method set forth in paragraph (d)(10)(i)(B) of this section. In this case, K's designated sales of qualifying stablecoins resulted in total gross proceeds of

\$9,000, which is the total of \$1,000 from sale of WW for cash, \$5,000 from the sale of WW in exchange for YY, and \$3,000 from the sale of YY for cash. Because K's designated sales of WW and YY did not exceed \$10,000, CRX is not required to make a return of information under this section for any of K's qualifying stablecoin sales. The \$10,000 of gross proceeds from the sale of WW for DL, which is not a qualifying stablecoin, is not included in this calculation to determine if the *de minimis* threshold has been exceeded because that sale is not a designated sale and, as such, is not reportable.

(2) *Example 2: Optional reporting method for qualifying stablecoins—(i) Facts.* The facts are the same as in paragraph (d)(10)(i)(D)(1)(i) of this section (the facts in *Example 1*), except that CRX also effects an additional sale of 4,000 units of YY in exchange for cash of \$4,000 on behalf of K.

(ii) *Analysis.* In lieu of reporting all of K's sales of WW and YY under paragraph (d)(2)(i)(B) of this section, CRX may report K's designated sales of WW and YY under the optional reporting method set forth in paragraph (d)(10)(i)(B) of this section. In this case, K's designated sales of qualifying stablecoins resulted in total gross proceeds of \$13,000, which is the total of \$1,000 from sale of WW for cash, \$5,000 from the sale of WW for YY, \$3,000 from the sale of YY for cash, and \$4,000 from the sale of YY for cash. Because K's designated sales of all types of qualifying stablecoins exceeds \$10,000, CRX must make two returns of information under this section: one for all of K's designated sales of WW and another for all of K's designated sales of YY.

(ii) *Qualifying stablecoin.* For purposes of this section, the term *qualifying stablecoin* means any digital asset that satisfies the conditions set forth in paragraphs (d)(10)(ii)(A) through (C) of this section for the entire calendar year.

(A) *Designed to track certain other currencies.* The digital asset is designed to track on a one-to-one basis a single convertible currency issued by a government or a central bank (including the U.S. dollar).

(B) *Stabilization mechanism.* Either:

(1) The digital asset uses a stabilization mechanism that causes the unit value of the digital asset not to fluctuate from the unit value of the convertible currency it was designed to track by more than 3 percent over any consecutive 10-day period, determined using Coordinated Universal Time (UTC), during the calendar year; or

(2) The issuer of the digital asset is required by regulation to redeem a unit of the digital asset at any time on a one-to-one basis for the same convertible currency that the digital asset was designed to track.

(C) *Accepted as payment.* The digital asset is generally accepted as payment by persons other than the issuer. A digital asset that satisfies the conditions

set forth in paragraphs (d)(10)(ii)(A) and (B) of this section that is accepted by a broker pursuant to a sale of another digital asset, or that is accepted by a second party pursuant to a sale effected by a processor of digital asset payments described in paragraph (a)(9)(ii)(D) of this section, meets the condition set forth in this paragraph (d)(10)(ii)(C).

(D) *Examples—(1) Example 1—(i) Facts.* Y is a privately held corporation that issues DL1, a digital asset designed to track the value of the U.S. dollar. Pursuant to regulatory requirements, DL1 is backed in full by U.S. dollars and other liquid short-term U.S. dollar-denominated assets held by Y, and Y offers to redeem units of DL1 for U.S. dollars at par at any time. Y's retention of U.S. dollars and other liquid short-term U.S. dollar-denominated assets as collateral and Y's offer to redeem units of DL for U.S. dollars at par at any time are intended to cause DL1 to track the U.S. dollar on a one-to-one basis. Broker B accepts DL1 as payment in return for sales of other digital assets.

(ii) *Analysis.* DL1 satisfies the three conditions set forth in paragraphs (d)(10)(ii)(A) through (C) of this section. First, DL1 was designed to track on a one-to-one basis the U.S. dollar, which is a single convertible currency issued by a government or a central bank. Second, DL1 uses a stabilization mechanism, as described in paragraph (d)(10)(ii)(B)(2) of this section, that pursuant to regulatory requirements requires Y to offer to redeem one unit of DL1 for one U.S. dollar at any time. Finally, because B accepts DL1 as payment for sales of other digital assets, DL1 is generally accepted as payment by persons other than Y. Accordingly, DL1 is a qualifying stablecoin under this paragraph (d)(10)(ii).

(2) *Example 2—(i) Facts.* Z is a privately held corporation that issues DL2, a digital asset designed to track the value of the U.S. dollar on a one-to-one basis that has a mechanism that is intended to effect that tracking. On April 28, Year X, Broker B effects the sale of units of DL2 for cash on behalf of customer C. During Year X, the unit value of DL2 did not fluctuate from the U.S. dollar by more than 3 percent over any consecutive 10-day period. Merchant M accepts payment in DL2 in return for goods and services in connection with sales effected by processors of digital asset payments.

(ii) *Analysis.* DL2 satisfies the three conditions set forth in paragraphs (d)(10)(ii)(A) through (C) of this section. First, DL2 was designed to track on a one-to-one basis the U.S. dollar, which is a single convertible currency issued by a government or a central bank. Second, DL2 uses a stabilization mechanism, as described in paragraph (d)(10)(ii)(B)(2) of this section, that results in the unit value of DL2 not fluctuating from the U.S. dollar by more than 3 percent over any consecutive 10-day period during the calendar year (Year X). Third, Merchant M accepts payment in DL2 in return for goods and services in connection with sales effected by processors of digital asset payments DL2 is generally accepted as

payment by persons other than Z. Accordingly, DL2 is a qualifying stablecoin under this paragraph (d)(10)(ii).

(iii) *Optional reporting method for specified nonfungible tokens—(A) In general.* In lieu of reporting sales of specified nonfungible tokens under the reporting rules provided under paragraph (d)(2)(i)(B) of this section, a broker may report sales of specified nonfungible tokens as defined in paragraph (d)(10)(iv) of this section on an aggregate basis as provided in this paragraph (d)(10)(iii). Other digital assets, including nonfungible tokens that are not specified nonfungible tokens, are not eligible for the optional reporting method in this paragraph (d)(10)(iii).

(B) *Reporting method for specified nonfungible tokens.* A broker reporting under this paragraph (d)(10)(iii) must report sales of specified nonfungible tokens if the customer's aggregate gross proceeds (after reduction for the allocable digital asset transaction costs) from all sales of specified nonfungible tokens exceed \$600 for the year. If the customer's aggregate gross proceeds (after reduction for the allocable digital asset transaction costs) from such sales effected by that broker do not exceed \$600 for the year, no report is required. A broker reporting under this paragraph (d)(10)(iii)(B) must report on a Form 1099-DA or any successor form in the manner required by such form or instructions the following information with respect to the customer's sales of specified nonfungible tokens—

(1) The name, address, and taxpayer identification number of the customer;

(2) The aggregate gross proceeds for the year from all sales of specified nonfungible tokens (after reduction for the allocable digital asset transaction costs as defined and allocated pursuant to paragraph (d)(5)(iv) of this section);

(3) The total number of specified nonfungible token sales;

(4) To the extent ordinarily known by the broker, the aggregate gross proceeds that is attributable to the first sale by a creator or minter of the specified nonfungible token; and

(5) Any other information required by the form or instructions.

(C) *Examples.* The following examples illustrate the rules of this paragraph (d)(10)(iii).

(1) *Example 1: Optional reporting method for specified nonfungible tokens—(i) Facts.* CRX is a digital asset broker that provides services to customer J, an individual not otherwise exempt from reporting. In Year 1, CRX sells on behalf of J, ten specified nonfungible tokens for a gross proceeds amount equal to \$1,500. CRX does not sell any other specified nonfungible tokens for J during Year 1.

(ii) *Analysis.* In lieu of reporting J's sales of the ten specified nonfungible tokens under paragraph (d)(2)(i)(B) of this section, CRX may report these sales under the reporting method set forth in this paragraph (d)(10)(iii). In this case, J's sales of the ten specified nonfungible tokens gave rise to total gross proceeds of \$1,500 for Year 1. Because the total gross proceeds from J's sales of the ten specified nonfungible tokens exceeds \$600, CRX must make a single return of information under this section for these sales.

(2) *Example 2: Optional reporting method for specified nonfungible tokens—(i) Facts.* The facts are the same as in paragraph (d)(10)(iii)(C)(1)(i) of this section (the facts in *Example 1*), except that the total gross proceeds from the sale of J's ten specified nonfungible tokens is \$500.

(ii) *Analysis.* Because J's sales of the specified nonfungible tokens result in total gross proceeds of \$500, CRX is not required to make a return of information under this section for J's sales of the specified nonfungible tokens.

(iv) *Specified nonfungible token.* For purposes of this section, the term *specified nonfungible token* means a digital asset that satisfies the conditions set forth in paragraphs (d)(10)(iv)(A) through (C) of this section.

(A) *Indivisible.* The digital asset cannot be subdivided into smaller units without losing its intrinsic value or function.

(B) *Unique.* The digital asset itself includes a unique digital identifier, other than a digital asset address, that distinguishes that digital asset from all other digital assets.

(C) *Excluded property.* The digital asset is not and does not directly or through one or more other digital assets that satisfy the conditions described in paragraphs (d)(10)(iv)(A) and (B) of this section, provide the holder with any interest in any of the following excluded property—

(1) A security under paragraph (a)(3) of this section;

(2) A commodity under paragraph (a)(5) of this section;

(3) A regulated futures contract under paragraph (a)(6) of this section;

(4) A forward contract under paragraph (a)(7) of this section; or

(5) A digital asset that does not satisfy the conditions described in paragraphs (d)(10)(iv)(A) and (B) of this section.

(D) *Examples.* The following examples illustrate the rules of this paragraph (d)(10)(iv).

(1) *Example 1: Specified nonfungible token—(i) Facts.* Individual J is an artist in the business of creating and selling digital assets that reference J's artwork. J creates a unique digital asset (DA-J) that represents J's artwork. The digital asset includes a unique digital identifier, other than a digital asset address, that distinguishes DA-J from all other digital assets. DA-J cannot be subdivided into smaller units.

(ii) *Analysis.* DA-J is a digital asset that satisfies the three conditions described in paragraphs (d)(10)(iv)(A) through (C) of this section. DA-J cannot be subdivided into smaller units without losing its intrinsic value or function. Additionally, DA-J includes a unique digital identifier that distinguishes DA-J from all other digital assets. Finally, DA-J does not provide the holder with any interest in excluded property listed in paragraphs (d)(10)(iv)(C)(1) through (5) of this section. Accordingly, DA-J is a specified nonfungible token under this paragraph (d)(10)(iv).

(2) *Example 2: Specified nonfungible token—(i) Facts.* K creates a unique digital asset (DA-K) that provides the holder with the right to redeem DA-K for 100 units of digital asset DE. Units of DE can be subdivided into smaller units and do not include a unique digital identifier, other than a digital asset address, that distinguishes one unit of DE from any other unit of DE. DA-K cannot be subdivided into smaller units and includes a unique digital identifier, other than a digital asset address, that distinguishes DA-K from all other digital assets.

(ii) *Analysis.* DA-K provides its holder with an interest in 100 units of digital asset DE, which is excluded property, as described in paragraph (d)(10)(iv)(C)(5) of this section, because DE units can be subdivided into smaller units and do not include unique digital identifiers that distinguish one unit of DE from any other unit of DE. Accordingly, DA-K is not a specified nonfungible token under this paragraph (d)(10)(iv).

(3) *Example 3: Specified nonfungible token—(i) Facts.* The facts are the same as in paragraph (d)(10)(iv)(D)(2)(i) of this section (the facts in *Example 2*) except that in addition to providing its holder with an interest in the 100 units of DE, DA-K also provides rights to or access to a unique work of art.

(ii) *Analysis.* Because DA-K provides its holder with an interest in excluded property described in paragraph (d)(10)(iv)(C)(5) of this section, it is not a specified nonfungible token under paragraph (d)(10)(iv) without regard to whether it also references property that is not excluded property.

(4) *Example 4: Specified nonfungible token—(i) Facts.* B creates a unique digital asset (DA-B) that provides the holder with the right to redeem DA-B for physical merchandise in B's store. DA-B cannot be subdivided into smaller units and includes a unique digital identifier, other than a digital asset address, that distinguishes DA-B from all other digital assets.

(ii) *Analysis.* DA-B is a digital asset that satisfies the three conditions described in paragraphs (d)(10)(iv)(A) through (C) of this section. DA-B cannot be subdivided into smaller units without losing its intrinsic value or function. Additionally, DA-B includes a unique digital identifier that distinguishes DA-B from all other digital assets. Finally, DA-B does not provide the holder with any interest in excluded property listed in paragraphs (d)(10)(iv)(C)(1) through (5) of this section. Accordingly, DA-B is a specified nonfungible token under this paragraph (d)(10)(iv).

(v) *Joint accounts.* For purposes of determining if the gross proceeds thresholds set forth in paragraphs (d)(10)(i)(B) and (d)(10)(iii)(B) of this section have been met for the customer, the customer is the person whose tax identification number would be required to be shown on the information return (but for the application of the relevant threshold) after the application of the backup withholding rules under § 31.3406(h)–2(a) of this chapter.

(11) *Collection and retention of additional information with respect to the sale of a digital asset.* A broker required to make an information return under paragraph (c) of this section with respect to the sale of a digital asset must collect the following additional information, retain it for seven years from the date of the due date for the information return required to be filed under this section, and make it available for inspection upon request by the Internal Revenue Service:

(i) The transaction ID as defined in paragraph (a)(24) of this section in connection with the sale, if any; and the digital asset address as defined in paragraph (a)(20) of this section (or digital asset addresses if multiple) from which the digital asset was transferred in connection with the sale, if any;

(ii) For each sale of a digital asset that was held by the broker in a hosted wallet on behalf of a customer and was previously transferred into an account at the broker (transferred-in digital asset), the transaction ID of such transfer in and the digital asset address (or digital asset addresses if multiple) from which the digital asset was transferred, if any.

(e) * * *

(2) * * *

(iii) *Coordination rules for exchanges of digital assets made through barter exchanges.* Exchange transactions involving the exchange of one digital asset held by one customer of a broker for a different digital asset held by a second customer of the same broker must be treated as a sale under paragraph (a)(9)(ii) of this section subject to reporting under paragraphs (c) and (d) of this section, and not as an exchange of personal property through a barter exchange subject to reporting under this paragraph (e) and paragraph (f) of this section, with respect to both customers involved in the exchange transaction. In the case of an exchange transaction that involves the transfer of a digital asset for personal property or services that are not also digital assets, if the digital asset payment also is a reportable payment transaction subject to reporting by the barter exchange under § 1.6050W–1(a)(1), the exchange transaction must be treated as a

reportable payment transaction and not as an exchange of personal property through a barter exchange subject to reporting under this paragraph (e) and paragraph (f) of this section with respect to the member or client disposing of personal property or services.

Additionally, an exchange transaction described in the previous sentence must be treated as a sale under paragraph (a)(9)(ii)(D) of this section subject to reporting under paragraphs (c) and (d) of this section and not as an exchange of personal property through a barter exchange subject to reporting under this paragraph (e) and paragraph (f) of this section with respect to the member or client disposing of the digital asset. Nothing in this paragraph (e)(2)(iii) may be construed to mean that any broker is or is not properly classified as a barter exchange.

* * * * *

(g) *Exempt foreign persons*—(1) *Brokers*. No return of information is required to be made by a broker with respect to a customer who is considered to be an exempt foreign person under paragraphs (g)(1)(i) through (iii) or paragraph (g)(4) of this section. See paragraph (a)(1) of this section for when a person is not treated as a broker under this section for a sale effected at an office outside the United States. See paragraphs (g)(1)(i) through (g)(3) of this section for rules relating to sales as defined in paragraph (a)(9)(i) of this section and see paragraph (g)(4) of this section for rules relating to sales of digital assets as defined in paragraph (a)(9)(ii) of this section.

(i) With respect to a sale as defined in paragraph (a)(9)(i) of this section (relating to sales other than sales of digital assets) that is effected at an office of a broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person if the broker can, prior to the payment, reliably associate the payment with documentation upon which it can rely in order to treat the customer as a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii), as made to a foreign payee in accordance with § 1.6049–5(d)(1), or presumed to be made to a foreign payee under § 1.6049–5(d)(2) or (3). For purposes of this paragraph (g)(1)(i), the provisions in § 1.6049–5(c) regarding rules applicable to documentation of foreign status shall apply with respect to a sale when the broker completes the acts necessary to effect the sale at an office outside the United States, as described in paragraph (g)(3)(iii)(A) of this section, and no office of the same broker within the United States negotiated the sale with

the customer or received instructions with respect to the sale from the customer. The provisions in § 1.6049–5(c) regarding the definitions of *U.S. payor*, *U.S. middleman*, *non-U.S. payor*, and *non-U.S. middleman* shall also apply for purposes of this paragraph (g)(1)(i). The provisions of § 1.1441–1 shall apply by substituting the terms *broker* and *customer* for the terms *withholding agent* and *payee*, respectively, and without regard for the fact that the provisions apply to amounts subject to withholding under chapter 3 of the Code. The provisions of § 1.6049–5(d) shall apply by substituting the terms *broker* and *customer* for the terms *payor* and *payee*, respectively. For purposes of this paragraph (g)(1)(i), a broker that is required to obtain, or chooses to obtain, a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) from an individual may rely on the withholding certificate only to the extent the certificate includes a certification that the beneficial owner has not been, and at the time the certificate is furnished, reasonably expects not to be present in the United States for a period aggregating 183 days or more during each calendar year to which the certificate pertains. The certification is not required if a broker receives documentary evidence under § 1.6049–5(c)(1) or (4).

(ii) With respect to a redemption or retirement of stock or an obligation (the interest or original issue discount on, which is described in § 1.6049–5(b)(6), (7), (10), or (11) or the dividends on, which are described in § 1.6042–3(b)(1)(iv)) that is effected at an office of a broker outside the United States by the issuer (or its paying or transfer agent), the broker may treat the customer as an exempt foreign person if the broker is not also acting in its capacity as a custodian, nominee, or other agent of the payee.

(iii) With respect to a sale as defined in paragraph (a)(9)(i) of this section (relating to sales other than sales of digital assets) that is effected by a broker at an office of the broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person for the period that those proceeds are assets blocked as described in § 1.1441–2(e)(3). For purposes of this paragraph (g)(1)(iii) and section 3406, a sale is deemed to occur in accordance with paragraph (d)(4) of this section. The exemption in this paragraph (g)(1)(iii) shall terminate when payment of the proceeds is deemed to occur in accordance with the provisions of § 1.1441–2(e)(3).

(2) *Barter exchange*. No return of information is required by a barter exchange under the rules of paragraphs (e) and (f) of this section with respect to a client or a member that the barter exchange may treat as an exempt foreign person pursuant to the procedures described in paragraph (g)(1) of this section.

(3) *Applicable rules*—(i) *Joint owners*. Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (g)(1)(i) or (g)(2) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the broker or barter exchange cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (g)(1)(i) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (g)(3)(i), the grace period described in § 1.6049–5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

(ii) *Special rules for determining who the customer is*. For purposes of paragraph (g)(1) of this section, the determination of who the customer is shall be made on the basis of the provisions in § 1.6049–5(d) by substituting in that section the terms *payor* and *payee* with the terms *broker* and *customer*.

(iii) *Place of effecting sale*—(A) *Sale outside the United States*. For purposes of this paragraph (g), a sale as defined in paragraph (a)(9)(i) of this section (relating to sales other than sales of digital assets) is considered to be effected by a broker at an office outside the United States if, in accordance with instructions directly transmitted to such office from outside the United States by the broker's customer, the office completes the acts necessary to effect the sale outside the United States. The acts necessary to effect the sale may be considered to have been completed outside the United States without regard to whether—

(1) Pursuant to instructions from an office of the broker outside the United States, an office of the same broker within the United States undertakes one or more steps of the sale in the United States; or

(2) The gross proceeds of the sale are paid by a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account.

(B) *Sale inside the United States.* For purposes of this paragraph (g), a sale that is considered to be effected by a broker at an office outside the United States under paragraph (g)(3)(iii)(A) of this section shall nevertheless be considered to be effected by a broker at an office inside the United States if either—

(1) The customer has opened an account with a United States office of that broker;

(2) The customer has transmitted instructions concerning this and other sales to the foreign office of the broker from within the United States by mail, telephone, electronic transmission or otherwise (unless the transmissions from the United States have taken place in isolated and infrequent circumstances);

(3) The gross proceeds of the sale are paid to the customer by a transfer of funds into an account (other than an international account as defined in § 1.6049–5(e)(4)) maintained by the customer in the United States or mailed to the customer at an address in the United States;

(4) The confirmation of the sale is mailed to a customer at an address in the United States; or

(5) An office of the same broker within the United States negotiates the sale with the customer or receives instructions with respect to the sale from the customer.

(iv) *Special rules where the customer is a foreign intermediary or certain U.S. branches.* A foreign intermediary, as defined in § 1.1441–1(c)(13), is an exempt foreign person, except when the broker has actual knowledge (within the meaning of § 1.6049–5(c)(3)) that the person for whom the intermediary acts is a U.S. person that is not exempt from reporting under paragraph (c)(3) of this section or the broker is required to presume under § 1.6049–5(d)(3) that the payee is a U.S. person that is not an exempt recipient. If a foreign intermediary, as described in § 1.1441–1(c)(13), or a U.S. branch that is not treated as a U.S. person receives a payment from a payor or middleman (as defined in § 1.6049–4(a) and (f)(4)), which payment the payor or middleman can reliably associate with a valid withholding certificate described in § 1.1441–1(e)(3)(ii), (iii) or (v), respectively, furnished by such intermediary or branch, then the intermediary or branch is not required to report such payment when it, in turn, pays the amount, unless, and to the extent, the intermediary or branch knows that the payment is required to be reported under this section and was not so reported. For example, if a U.S.

branch described in § 1.1441–1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under paragraph (c)(3) of this section to the person from whom the U.S. branch receives the payment, the U.S. branch must report the payment on an information return. *See, however,* paragraph (c)(3)(ii) of this section for when reporting under section 6045 is coordinated with reporting under chapter 4 of the Code or an applicable IGA (as defined in § 1.6049–4(f)(7)). The exception of this paragraph (g)(3)(iv) for amounts paid by a foreign intermediary shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Code except as provided under the agreement described in § 1.1441–1(e)(5)(iii).

(4) *Rules for sales of digital assets.* The rules of this paragraph (g)(4) apply to a sale of a digital asset as defined in paragraph (a)(9)(ii) of this section. *See* paragraph (a)(1) of this section for when a person is treated as a broker under this section with respect to a sale of a digital asset. *See* paragraph (c) of this section for rules requiring brokers to report sales. *See* paragraph (g)(1) of this section providing that no return of information is required to be made by a broker effecting a sale of a digital asset for a customer who is considered to be an exempt foreign person under this paragraph (g)(4).

(i) *Definitions.* The following definitions apply for purposes of this section.

(A) *U.S. digital asset broker.* A U.S. digital asset broker is a person that effects sales of digital assets on behalf of others and that is—

(1) A U.S. payor or U.S. middleman as defined in § 1.6049–5(c)(5)(i)(A) that is not a foreign branch or office of such person, § 1.6049–5(c)(5)(i)(B) or (F) that is not a territory financial institution described in § 1.1441–1(b)(2)(iv).

(2) [Reserved]

(B) [Reserved]

(ii) *Rules for U.S. digital asset brokers—(A) Place of effecting sale.* For purposes of this section, a sale of a digital asset that is effected by a U.S. digital asset broker is considered a sale effected at an office inside the United States.

(B) *Determination of foreign status.* A U.S. digital asset broker may treat a customer as an exempt foreign person with respect to a sale effected at an office inside the United States provided that, prior to the payment to such customer of the gross proceeds from the sale, the broker has a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) that the broker may

treat as valid under § 1.1441–1(e)(2)(ii) and that satisfies the requirements of paragraph (g)(4)(vi) of this section. Additionally, a U.S. digital asset broker may treat a customer as an exempt foreign person with respect to a sale effected at an office inside the United States under an applicable presumption rule as provided in paragraph (g)(4)(vi)(A)(2)(i) of this section. A beneficial owner withholding certificate provided by an individual must include a certification that the beneficial owner has not been, and at the time the certificate is furnished reasonably expects not to be, present in the United States for a period aggregating 183 days or more during each calendar year to which the certificate pertains. *See* paragraphs (g)(4)(vi)(A) through (D) of this section for additional rules applicable to withholding certificates, when a broker may rely on a withholding certificate, presumption rules that apply in the absence of documentation, and rules for customers that are joint account holders. *See* paragraph (g)(4)(vi)(E) of this section for the extent to which a U.S. digital asset broker may treat a customer as an exempt foreign person with respect to a payment treated as made to a foreign intermediary, flow-through entity or certain U.S. branches. *See* paragraph (g)(4)(vi)(F) of this section for a transition rule for preexisting accounts.

(iii) *Rules for CFC digital asset brokers not conducting activities as money services businesses.*

(iv) *Rules for non-U.S. digital asset brokers not conducting activities as money services businesses.*

(A) [Reserved]

(B) *Sale treated as effected at an office inside the United States—(1) [Reserved]*

(2) *U.S. indicia.* The U.S. indicia relevant for purposes of this paragraph (g)(4)(iv)(B) are as follows—

(i) A permanent residence address (as defined in § 1.1441–1(c)(38)) in the U.S. or a U.S. mailing address for the customer, a current U.S. telephone number and no non-U.S. telephone number for the customer, or the broker's classification of the customer as a U.S. person in its records;

(ii) An unambiguous indication of a U.S. place of birth for the customer; or

(v) [Reserved]

(vi) *Rules applicable to brokers that obtain or are required to obtain documentation for a customer and presumption rules—(A) In general.* Paragraph (g)(4)(vi)(A)(1) of this section describes rules applicable to documentation permitted to be used under this paragraph (g)(4) to determine whether a customer may be treated as an exempt foreign person. Paragraph

(g)(4)(vi)(A)(2) of this section provides presumption rules that apply if the broker does not have documentation on which the broker may rely to determine a customer's status. Paragraph (g)(4)(vi)(A)(3) of this section provides a grace period for obtaining documentation in circumstances where there are indicia that a customer is a foreign person. Paragraph (g)(4)(vi)(A)(4) of this section provides rules relating to blocked income. Paragraph (g)(4)(vi)(B) of this section provides rules relating to reliance on beneficial ownership withholding certificates to determine whether a customer is an exempt foreign person. Paragraph (g)(4)(vi)(C) of this section provides rules relating to reliance on documentary evidence to determine whether a customer is an exempt foreign person. Paragraph (g)(4)(vi)(D) of this section provides rules relating to customers that are joint account holders. Paragraph (g)(4)(vi)(E) of this section provides special rules for a customer that is a foreign intermediary, a flow-through entity, or certain U.S. branches. Paragraph (g)(4)(vi)(F) of this section provides a transition rule for obtaining documentation to treat a customer as an exempt foreign person.

(1) *Documentation of foreign status.* A broker may treat a customer as an exempt foreign person when the broker obtains valid documentation permitted to support a customer's foreign status as described in paragraph (g)(4)(ii), (iii), or (iv) of this section (as applicable) that the broker can reliably associate (within the meaning of § 1.1441-1(b)(2)(vii)(A)) with a payment of gross proceeds, provided that the broker is not required to treat the documentation as unreliable or incorrect under paragraph (g)(4)(vi)(B) or (C) of this section. For rules regarding the validity period of a withholding certificate, or of documentary evidence (when permitted to be relied upon under paragraph (g)(4)(vi)(C) of this section), retention of documentation, electronic transmission of documentation, information required to be provided on a withholding certificate, who may sign a withholding certificate, when a substitute withholding certificate may be accepted, and general reliance rules on documentation (including when a prior version of a withholding certificate may be relied upon), the provisions of §§ 1.1441-1(e)(4)(i) through (ix) and 1.6049-5(c)(1)(ii) apply, with the following modifications—

(i) The provisions in § 1.1441-1(e)(4)(i) through (ix) apply by substituting the terms *broker* and *customer* for the terms *withholding agent* and *payee*, respectively, and

disregarding the fact that the provisions under § 1.1441-1 apply only to amounts subject to withholding under chapter 3 of the Code;

(ii) The provisions of § 1.6049-5(c)(1)(ii) (relating to general requirements for when a payor may rely upon and must maintain documentary evidence with respect to a payee) apply (as applicable to the broker) by substituting the terms *broker* and *customer* for the terms *payor* and *payee*, respectively;

(iii) To apply § 1.1441-1(e)(4)(viii) (reliance rules for documentation), the reference to § 1.1441-7(b)(4) through (6) is replaced by the provisions of paragraph (g)(4)(vi)(B) or (C) of this section, as applicable, and the reference to § 1.1441-6(c)(2) is disregarded; and

(iv) To apply § 1.1441-1(e)(4)(viii) (reliance rules for documentation) and (ix) (certificates to be furnished to a withholding agent for each obligation unless an exception applies), the provisions applicable to a financial institution apply to a broker described in this paragraph (g)(4) whether or not it is a financial institution.

(2) *Presumption rules—(i) In general.* If a broker is not permitted to treat a customer as an exempt foreign person under paragraph (g)(4)(vi)(A)(1) of this section because the broker has not collected the documentation permitted to be collected under this paragraph (g)(4) or is not permitted to rely on the documentation it has collected, the broker must determine the classification of a customer (as an individual, entity, etc.) by applying the presumption rules of § 1.1441-1(b)(3)(ii), except that references in § 1.1441-1(b)(3)(ii)(B) to exempt recipient categories under section 6049 are replaced by the exempt recipient categories in paragraph (c)(3)(i) of this section. With respect to a customer that a broker has classified as an entity, the broker must determine the status of the customer as U.S. or foreign by applying §§ 1.1441-1(b)(3)(iii)(A) and 1.1441-5(d) and (e)(6), except that § 1.1441-1(b)(3)(iii)(A)(1)(iv) does not apply. For presumption rules to treat a payment as made to an intermediary or flow-through entity and whether the payment is also treated as made to an exempt foreign person, *see* paragraph (g)(4)(vi)(E) of this section. Notwithstanding the provisions of this paragraph (g)(4)(vi)(A)(2), a broker may not treat a customer as a foreign person under this paragraph (g)(4)(vi)(A)(2) if the broker has actual knowledge or reason to know that the customer is a U.S. person. For purposes of applying the presumption rules of this paragraph (g)(4)(vi)(A)(2), a broker must identify

its customer by applying the rules of § 1.6049-5(d)(1), substituting the terms *customer* and *broker* for the terms *payee* and *payor*, respectively.

(ii) *Presumption rule specific to U.S. digital asset brokers.* With respect to a customer that a U.S. digital asset broker has classified as an individual, the broker must treat the customer as a U.S. person.

(3) *Grace period to collect valid documentation in the case of indicia of a foreign customer.* If a broker has not obtained valid documentation that it can reliably associate with a payment of gross proceeds to a customer to treat the customer as an exempt foreign person, or if the broker is unable to rely upon documentation under the rules described in paragraph (g)(4)(vi)(A)(1) of this section or is required to treat documentation obtained for a customer as unreliable or incorrect (after applying paragraphs (g)(4)(vi)(B) and (C) of this section), the broker may apply the grace period described in § 1.6049-5(d)(2)(ii) (generally allowing in certain circumstances a payor to treat an account as owned by a foreign person for a 90 day period). In applying § 1.6049-5(d)(2)(ii), references to *securities* described in § 1.1441-6(c)(2) are replaced with *digital assets*.

(4) *Blocked income.* A broker may apply the provisions in paragraph (g)(1)(iii) of this section to treat a customer as an exempt foreign person when the proceeds are blocked income as described in § 1.1441-2(e)(3).

(B) *Reliance on beneficial ownership withholding certificates to determine foreign status.* For purposes of determining whether a customer may be treated as an exempt foreign person under this section, except as otherwise provided in this paragraph (g)(4)(vi)(B), a broker may rely on a beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section unless the broker has actual knowledge or reason to know that the certificate is unreliable or incorrect. With respect to a U.S. digital asset broker described in paragraph (g)(4)(i)(A)(1) of this section, reason to know is limited to when the broker has any of the U.S. indicia set forth in paragraph (g)(4)(iv)(B)(2)(i) or (ii) of this section in its account opening files or other files pertaining to the account (account information), including documentation collected for purposes of an AML program or the beneficial owner withholding certificate. A broker will not be considered to have reason to know that a certificate is unreliable or incorrect based on documentation collected for an AML program until the date that is 30 days after the account is opened. A

broker may rely, however, on a beneficial owner withholding certificate notwithstanding the presence of any of the U.S. indicia set forth in paragraph (g)(4)(iv)(B)(2)(i) or (ii) of this section on the withholding certificate or in the account information for a customer in the circumstances described in paragraphs (g)(4)(vi)(B)(1) and (2) of this section.

(1) *Collection of information other than U.S. place of birth—(i) In general.* With respect to any of the U.S. indicia described in paragraph (g)(4)(iv)(B)(2)(i) of this section, the broker has in its possession for a customer who is an individual documentary evidence establishing foreign status (as described in § 1.1471–3(c)(5)(i)) that does not contain a U.S. address and the customer provides the broker with a reasonable explanation (as defined in § 1.1441–7(b)(12)) from the customer, in writing, supporting the claim of foreign status. Notwithstanding the preceding sentence, in a case in which the broker classified an individual customer as a U.S. person in its account information, the broker may treat the customer as an exempt foreign person only if it has in its possession documentary evidence described in § 1.1471–3(c)(5)(i)(B) evidencing citizenship in a country other than the United States. In the case of a customer that is an entity, the broker may treat the customer as an exempt foreign person if it has in its possession documentation establishing foreign status that substantiates that the entity is actually organized or created under the laws of a foreign country.

(ii) [Reserved]

(2) *Collection of information showing U.S. place of birth.* With respect to the U.S. indicia described in paragraph (g)(4)(iv)(B)(2)(ii) of this section, the broker has in its possession documentary evidence described in § 1.1471–3(c)(5)(i)(B) evidencing citizenship in a country other than the United States and the broker has in its possession either a copy of the customer's Certificate of Loss of Nationality of the United States or a reasonable written explanation of the customer's renunciation of U.S. citizenship or the reason the customer did not obtain U.S. citizenship at birth.

(C) [Reserved]

(D) *Joint owners.* In the case of amounts paid to customers that are joint account holders for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (g)(4), such amounts are presumed made to U.S. payees who are not exempt recipients (as defined in paragraph (c)(3)(i)(B) of this section) when the

conditions of paragraph (g)(3)(i) of this section are met.

(E) *Special rules for customer that is a foreign intermediary, a flow-through entity, or certain U.S. branches—(1) Foreign intermediaries in general.* For purposes of this paragraph (g)(4), a broker may determine the status of a customer as a foreign intermediary (as defined in § 1.1441–1(c)(13)) by reliably associating (under § 1.1441–1(b)(2)(vii)) a payment of gross proceeds with a valid foreign intermediary withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii), without regard to whether the withholding certificate contains a withholding statement and withholding certificates or other documentation for each account holder. In the case of a payment of gross proceeds from a sale of a digital asset that a broker treats as made to a foreign intermediary under this paragraph (g)(4)(vi)(E)(1), the broker must treat the foreign intermediary as an exempt foreign person except to the extent required by paragraph (g)(3)(iv) of this section (rules for when a broker is required to treat a payment as made to a U.S. person that is not an exempt recipient under paragraph (c)(3) of this section and for reporting that may be required by the foreign intermediary).

(i) *Presumption rule specific to U.S. digital asset brokers.* A U.S. digital asset broker that does not have a valid foreign intermediary withholding certificate or a valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section for the customer applies the presumption rules in § 1.1441–1(b)(3)(ii)(B) (which would presume that the entity is not an intermediary). For purposes of applying the presumption rules referenced in the preceding sentence, a U.S. digital asset broker must identify its customer by applying the rules of § 1.6049–5(d)(1), substituting the terms *customer* and *U.S. digital asset broker* for the terms *payee* and *payor*, respectively. See § 1.1441–1(b)(3)(iii) for presumption rules relating to the U.S. or foreign status of a customer.

(ii) [Reserved]

(2) *Foreign flow-through entities.* For purposes of this paragraph (g)(4), a broker may determine the status of a customer as a foreign flow-through entity (as defined in § 1.1441–1(c)(23)) by reliably associating (under § 1.1441–1(b)(2)(vii)) a payment of gross proceeds with a valid foreign flow-through withholding certificate described in § 1.1441–5(c)(3)(iii) (relating to nonwithholding foreign partnerships) or § 1.1441–5(e)(5)(iii) (relating to foreign simple trusts and foreign grantor trusts that are nonwithholding foreign trusts),

without regard to whether the withholding certificate contains a withholding statement and withholding certificates or other documentation for each partner. A broker may alternatively determine the status of a customer as a foreign flow-through entity based on the presumption rules in §§ 1.1441–1(b)(3)(ii)(B) (relating to entity classification), 1.1441–5(d) (relating to partnership status as U.S. or foreign) and 1.1441–5(e)(6) (relating to the status of trusts and estates as U.S. or foreign). For purposes of applying the presumption rules referenced in the preceding sentence, a broker must identify its customer by applying the rules of § 1.6049–5(d)(1), substituting the terms *customer* and *broker* for the terms *payee* and *payor*, respectively. In the case of a payment of gross proceeds from a sale of a digital asset that a broker treats as made to a foreign flow-through entity under this paragraph (g)(4)(vi)(E)(2), the broker must treat the foreign flow-through entity as an exempt foreign person except to the extent required by § 1.6049–5(d)(3)(ii) (rules for when a broker is required to treat a payment as made to a U.S. person other than an exempt recipient (substituting *exempt recipient* under § 1.6045–1(c)(3) for *exempt recipient* described in § 1.6049–4(c))).

(3) *U.S. branches that are not beneficial owners.* For purposes of this paragraph (g)(4), a broker may determine the status of a customer as a U.S. branch (as described in § 1.1441–1(b)(2)(iv)) that is not a beneficial owner (as defined in § 1.1441–1(c)(6)) of a payment of gross proceeds by reliably associating (under § 1.1441–1(b)(2)(vii)) the payment with a valid U.S. branch withholding certificate described in § 1.1441–1(e)(3)(v) without regard to whether the withholding certificate contains a withholding statement and withholding certificates or other documentation for each person for whom the branch receives the payment. If a U.S. branch certifies on a U.S. branch withholding certificate described in the preceding sentence that it agrees to be treated as a U.S. person under § 1.1441–1(b)(2)(iv)(A), the broker provided the certificate must treat the U.S. branch as an exempt foreign person. If a U.S. branch does not certify as described in the preceding sentence on its U.S. branch withholding certificate, the broker provided the certificate must treat the U.S. branch as an exempt foreign person except to the extent required by paragraph (g)(3)(iv) of this section (rules for when a broker is required to treat a payment as made to a U.S. person that is not an exempt

recipient under paragraph (c)(3) of this section and for reporting that may be required by the U.S. branch). In a case in which a broker cannot reliably associate a payment of gross proceeds made to a U.S. branch with a U.S. branch withholding certificate described in § 1.1441–1(e)(3)(v) or a valid beneficial owner withholding certificate described in paragraph (g)(4)(ii)(B) of this section, *see* paragraph (g)(4)(vi)(E)(1) of this section for determining the status of the U.S. branch as a beneficial owner or intermediary.

(F) *Transition rule for obtaining documentation to treat a customer as an exempt foreign person.* Notwithstanding the rules of this paragraph (g)(4) for determining the status of a customer as an exempt foreign person, for a sale of a digital asset effected before January 1, 2027, that was held in an account established for the customer by a broker before January 1, 2026, the broker may treat the customer as an exempt foreign person provided that the customer has not previously been classified as a U.S. person by the broker, and the information that the broker has in the account opening files or other files pertaining to the account, including documentation collected for purposes of an AML program, includes a residence address for the customer that is not a U.S. address.

(vii) *Barter exchanges.* No return of information is required by a barter exchange under the rules of paragraphs (e) and (f) of this section with respect to a client or a member that the barter exchange may treat as an exempt foreign person pursuant to the procedures described in this paragraph (g)(4).

(5) *Examples.* The application of the provisions of paragraphs (g)(1) through (3) of this section may be illustrated by the following examples:

(i) *Example 1.* FC is a foreign corporation that is not a U.S. payor or U.S. middleman described in § 1.6049–5(c)(5) that regularly issues and retires its own debt obligations. A is an individual whose residence address is inside the United States, who holds a bond issued by FC that is in registered form (within the meaning of section 163(f) and the regulations under that section). The bond is retired by FP, a foreign corporation that is a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of FC. FP mails the proceeds to A at A's U.S. address. The sale would be considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section except that the proceeds of the sale are mailed to a U.S. address. For that reason, the sale is considered to be effected at an office of the broker inside the United States under paragraph (g)(3)(iii)(B) of this section.

Therefore, FC is a broker under paragraph (a)(1) of this section with respect to this transaction because, although it is not a U.S. payor or U.S. middleman, as described in § 1.6049–5(c)(5), it is deemed to effect the sale in the United States. FP is a broker for the same reasons. However, under the multiple broker exception under paragraph (c)(3)(iii) of this section, FP, rather than FC, is required to report the payment because FP is responsible for paying the holder the proceeds from the retired obligations. Under paragraph (g)(1)(i) of this section, FP may not treat A as an exempt foreign person and must make an information return under section 6045 with respect to the retirement of the FC bond, unless FP obtains the certificate or documentation described in paragraph (g)(1)(i) of this section.

(ii) *Example 2.* The facts are the same as in paragraph (g)(5)(i) of this section (the facts in *Example 1*) except that FP mails the proceeds to A at an address outside the United States. Under paragraph (g)(3)(iii)(A) of this section, the sale is considered to be effected at an office of the broker outside the United States. Therefore, under paragraph (a)(1) of this section, neither FC nor FP is a broker with respect to the retirement of the FC bond. Accordingly, neither is required to make an information return under section 6045.

(iii) *Example 3.* The facts are the same as in paragraph (g)(5)(ii) of this section (the facts in *Example 2*) except that FP is also the agent of A. The result is the same as in paragraph (g)(5)(ii) of this section (*Example 2*). Neither FP nor FC are brokers under paragraph (a)(1) of this section with respect to the sale since the sale is effected outside the United States and neither of them are U.S. payors (within the meaning of § 1.6049–5(c)(5)).

(iv) *Example 4.* The facts are the same as in paragraph (g)(5)(i) of this section (the facts in *Example 1*) except that the registered bond held by A was issued by DC, a domestic corporation that regularly issues and retires its own debt obligations. Also, FP mails the proceeds to A at an address outside the United States. Interest on the bond is not described in paragraph (g)(1)(ii) of this section. The sale is considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section. DC is a broker under paragraph (a)(1)(i)(B) of this section. DC is not required to report the payment under the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in § 1.6049–5(c)(5) and the sale is effected outside the United States. Accordingly, FP is not a broker under paragraph (a)(1) of this section.

(v) *Example 5.* The facts are the same as in paragraph (g)(5)(iv) of this section (the facts in *Example 4*) except that FP is also the agent of A. DC is a broker under paragraph (a)(1) of this section. DC is not required to report under the multiple broker exception under paragraph (c)(3)(iii) of this section. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in § 1.6049–5(c)(5) and the sale is effected outside the United States and therefore FP is not a broker under paragraph (a)(1) of this section.

(vi) *Example 6.* The facts are the same as in paragraph (g)(5)(iv) of this section (the facts in *Example 4*) except that the bond is retired by DP, a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of DC. DP is a U.S. payor under § 1.6049–5(c)(5). DC is not required to report under the multiple broker exception under paragraph (c)(3)(iii) of this section. DP is required to make an information return under section 6045 because it is the person responsible for paying the proceeds from the retired obligations unless DP obtains the certificate or documentary evidence described in paragraph (g)(1)(i) of this section.

(vii) *Example 7—(A) Facts.* Customer A owns U.S. corporate bonds issued in registered form after July 18, 1984, and carrying a stated rate of interest. The bonds are held through an account with foreign bank, X, and are held in street name. X is a wholly-owned subsidiary of a U.S. company and is not a qualified intermediary within the meaning of § 1.1441–1(e)(5)(ii). X has no documentation regarding A. A instructs X to sell the bonds. In order to effect the sale, X acts through its agent in the United States, Y. Y sells the bonds and remits the sales proceeds to X. X credits A's account in the foreign country. X does not provide documentation to Y and has no actual knowledge that A is a foreign person but it does appear that A is an entity (rather than an individual).

(B) *Analysis with respect to Y's obligations to withhold and report.* Y treats X as the customer, and not A, because Y cannot treat X as an intermediary because it has received no documentation from X. Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is an exempt recipient. Further, Y is not required to report the amount of accrued interest paid to X on Form 1042–S under § 1.1461–1(c)(2)(ii) because accrued interest is not an amount subject to reporting under chapter 3 unless the withholding agent knows that the obligation is being sold with a primary purpose of avoiding tax.

(C) *Analysis with respect to X's obligations to withhold and report.* Although X has effected, within the meaning of paragraph (a)(1) of this section, the sale of a security at an office outside the United States under paragraph (g)(3)(iii) of this section, X is treated as a broker, under paragraph (a)(1) of this section, because as a wholly-owned subsidiary of a U.S. corporation, X is a controlled foreign corporation and therefore is a U.S. payor. *See* § 1.6049–5(c)(5). Under the presumptions described in § 1.6049–5(d)(2) (as applied to amounts not subject to withholding under chapter 3), X must apply the presumption rules of § 1.1441–1(b)(3)(i) through (iii), with respect to the sales proceeds, to treat A as a partnership that is a U.S. non-exempt recipient because the presumption of foreign status for offshore obligations under § 1.1441–1(b)(3)(iii)(D) does not apply. *See* paragraph (g)(1)(i) of this section. Therefore, unless X is an FFI (as defined in § 1.1471–1(b)(47)) that is excepted from reporting the sales proceeds under paragraph (c)(3)(ii) of this section, the

payment of proceeds to A by X is reportable on a Form 1099 under paragraph (c)(2) of this section. X has no obligation to backup withhold on the payment based on the exemption under § 31.3406(g)–1(e) of this chapter, unless X has actual knowledge that A is a U.S. person that is not an exempt recipient. X is also required to separately report the accrued interest (*see* paragraph (d)(3) of this section) on Form 1099 under section 6049 because A is also presumed to be a U.S. person who is not an exempt recipient with respect to the payment because accrued interest is not an amount subject to withholding under chapter 3 and, therefore, the presumption of foreign status for offshore obligations under § 1.1441–1(b)(3)(iii)(D) does not apply. *See* § 1.6049–5(d)(2)(i).

(viii) *Example 8—(A) Facts.* The facts are the same as in paragraph (g)(5)(vii) of this section (the facts in *Example 7*) except that X is a foreign corporation that is not a U.S. payor under § 1.6049–5(c).

(B) *Analysis with respect to Y's obligations to withhold and report.* Y is not required to report the sales proceeds under the multiple broker exception under paragraph (c)(3)(iii) of this section, because X is the person responsible for paying the proceeds from the sale to A.

(C) *Analysis with respect to X's obligations to withhold and report.* Although A is presumed to be a U.S. payee under the presumptions of § 1.6049–5(d)(2), X is not considered to be a broker under paragraph (a)(1) of this section because it is not a U.S. payor under § 1.6049–5(c)(5). Therefore, X is not required to report the sale under paragraph (c)(2) of this section.

* * * * *

(j) *Time and place for filing; cross-references to penalty and magnetic media filing requirements.* Forms 1096 and 1099 required under this section shall be filed after the last calendar day of the reporting period elected by the broker or barter exchange and on or before February 28 of the following calendar year with the appropriate Internal Revenue Service Center, the address of which is listed in the instructions for Form 1096. For a digital asset sale effected prior to January 1, 2025, for which a broker chooses under paragraph (d)(2)(iii)(B) of this section to file an information return, Form 1096 and the Form 1099–B, *Proceeds From Broker and Barter Exchange Transactions*, or the Form 1099–DA, *Digital Asset Proceeds from Broker Transactions*, must be filed on or before February 28 of the calendar year following the year of that sale. *See* paragraph (l) of this section for the requirement to file certain returns on magnetic media. For provisions relating to the penalty provided for the failure to file timely a correct information return under section 6045(a), *see* § 301.6721–1 of this chapter. *See* § 301.6724–1 of this chapter for the waiver of a penalty if the

failure is due to reasonable cause and is not due to willful neglect.

* * * * *

(m) * * *

(1) *In general.* This paragraph (m) provides rules for a broker to determine and report the information required under this section for an option that is a covered security under paragraph (a)(15)(i)(E) or (H) of this section.

(2) * * *

(ii) * * *

(C) Notwithstanding paragraph (m)(2)(i) of this section, if an option is an option on a digital asset or an option on derivatives with a digital asset as an underlying property, this paragraph (m) applies to the option if it is granted or acquired on or after January 1, 2026.

* * * * *

(n) * * *

(6) * * *

(i) *Sale.* A broker must report the amount of market discount that has accrued on a debt instrument as of the date of the instrument's sale, as defined in paragraph (a)(9)(i) of this section. *See* paragraphs (n)(5) and (n)(11)(i)(B) of this section to determine whether the amount reported should take into account a customer election under section 1276(b)(2). *See* paragraph (n)(8) of this section to determine the accrual period to be used to compute the accruals of market discount. This paragraph (n)(6)(i) does not apply if the customer notifies the broker under the rules in paragraph (n)(5) of this section that the customer elects under section 1278(b) to include market discount in income as it accrues.

* * * * *

(q) *Applicability dates.* Except as otherwise provided in paragraphs (d)(6)(ix), (m)(2)(ii), and (n)(12)(ii) of this section, and in this paragraph (q), this section applies on or after January 6, 2017. Paragraphs (k)(4) and (l) of this section apply with respect to information returns required to be filed and payee statements required to be furnished on or after January 1, 2024. (For rules that apply after June 30, 2014, and before January 6, 2017, *see* 26 CFR 1.6045–1, as revised April 1, 2016.) Except in the case of a sale of digital assets for real property as described in paragraph (a)(9)(ii)(B) of this section, this section applies to sales of digital assets on or after January 1, 2025. In the case of a sale of digital assets for real property as described in paragraph (a)(9)(ii)(B) of this section, this section applies to sales of digital assets on or after January 1, 2026. For assets that are commodities pursuant to the Commodity Futures Trading Commission's certification procedures

described in 17 CFR 40.2, this section applies to sales of such commodities on or after January 1, 2025, without regard to the date such certification procedures were undertaken.

(r) *Cross-references.* For provisions relating to backup withholding for reportable transactions under this section, *see* § 31.3406(b)(3)–2 of this chapter for rules treating gross proceeds as reportable payments, § 31.3406(d)–1 of this chapter for rules with respect to backup withholding obligations, and § 31.3406(h)–3 of this chapter for the prescribed form for the certification of information required under this section.

■ **Par. 7.** Section 1.6045–4 is amended by:

- 1. Revising the section heading and paragraph (b)(1);
- 2. Removing the period at the end of paragraph (c)(2)(i) and adding a semicolon in its place;
- 3. Removing the word “or” from the end of paragraph (c)(2)(ii);
- 4. Removing the period at the end of paragraph (c)(2)(iii) and adding “; or” in its place;
- 5. Adding paragraph (c)(2)(iv);
- 6. Revising paragraph (d)(2)(ii)(A);
- 7. In paragraphs (e)(3)(iii)(A) and (B), adding the words “or digital asset” after the word “cash”;
- 8. Revising and republishing paragraphs (g) and (h)(1);
- 9. Adding paragraphs (h)(2)(iii) and (h)(3);
- 10. Revising paragraphs (i)(1) and (2), (i)(3)(ii), and (o);
- 11. In paragraph (r):
 - a. Redesignating *Examples 1* through *9* as paragraphs (r)(1) through (9), respectively;
 - b. In newly redesignated paragraph (r)(3), removing “section (b)(1)” and adding “paragraph (b)(1)” in its place;
 - c. Removing the heading in newly redesignated reserved paragraph (r)(5);
 - d. Revising newly redesignated paragraph (r)(7);
 - e. In the first sentence of newly redesignated paragraph (r)(8), removing “example (6)” and adding “paragraph (r)(6) of this section (the facts in *Example 6*)” in its place;
 - f. In the first sentence of newly redesignated paragraph (r)(9), removing “example (8)” and adding “paragraph (r)(8) of this section (the facts in *Example 8*)” in its place; and
 - g. Adding paragraph (r)(10).
- 12. Adding a sentence to the end of paragraph (s).

The revisions and additions read as follows:

§ 1.6045–4 Information reporting on real estate transactions.

* * * * *

(b) * * *

(1) *In general.* A transaction is a *real estate transaction* under this section if the transaction consists in whole or in part of the sale or exchange of *reportable real estate* (as defined in paragraph (b)(2) of this section) for money, indebtedness, property other than money, or services. The term *sale or exchange* shall include any transaction properly treated as a sale or exchange for Federal income tax purposes, whether or not the transaction is currently taxable. Thus, for example, a sale or exchange of a principal residence is a real estate transaction under this section even though the transferor may be entitled to the special exclusion of gain up to \$250,000 (or \$500,000 in the case of married persons filing jointly) from the sale or exchange of a principal residence provided by section 121 of the Code.

* * * * *

(c) * * *

(2) * * *

(iv) A principal residence (including stock in a cooperative housing corporation) provided the reporting person obtain from the transferor a written certification consistent with guidance that the Secretary has designated or may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter). If a residence has more than one owner, a real estate reporting person must either obtain a certification from each owner (whether married or not) or file an information return and furnish a payee statement for any owner that does not make the certification. The certification must be retained by the reporting person for four years after the year of the sale or exchange of the residence to which the certification applies. A reporting person who relies on a certification made in compliance with this paragraph (c)(2)(iv) will not be liable for penalties under section 6721 of the Code for failure to file an information return, or under section 6722 of the Code for failure to furnish a payee statement to the transferor, unless the reporting person has actual knowledge or reason to know that any assurance is incorrect.

(d) * * *

(2) * * *

(ii) * * *

(A) The United States or a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa, a political subdivision of any of the foregoing, or any wholly

owned agency or instrumentality of any one or more of the foregoing; or

* * * * *

(g) *Prescribed form.* Except as otherwise provided in paragraph (k) of this section, the information return required by paragraph (a) of this section shall be made on Form 1099-S, *Proceeds From Real Estate Transactions* or any successor form.

(h) * * *

(1) *In general.* The following information must be set forth on the Form 1099-S required by this section:

(i) The name, address, and taxpayer identification number (TIN) of the transferor (see also paragraph (f)(2) of this section);

(ii) A general description of the real estate transferred (in accordance with paragraph (h)(2)(i) of this section);

(iii) The date of closing (as defined in paragraph (h)(2)(ii) of this section);

(iv) To the extent required by the Form 1099-S and its instructions, the entire gross proceeds with respect to the transaction (as determined under the rules of paragraph (i) of this section), and, in the case of multiple transferors, the gross proceeds allocated to the transferor (as determined under paragraph (i)(5) of this section);

(v) To the extent required by the Form 1099-S and its instructions, an indication that the transferor—

(A) Received (or will, or may, receive) property (other than cash, consideration treated as cash, and digital assets in computing gross proceeds) or services as part of the consideration for the transaction; or

(B) May receive property (other than cash and digital assets) or services in satisfaction of an obligation having a stated principal amount; or

(C) May receive, in connection with a contingent payment transaction, an amount of gross proceeds that cannot be determined with certainty using the method described in paragraph (i)(3)(iii) of this section and is therefore not included in gross proceeds under paragraphs (i)(3)(i) and (iii) of this section;

(vi) The real estate reporting person's name, address, and TIN;

(vii) In the case of a payment made to the transferor using digital assets, the name and number of units of the digital asset, and the date the payment was made;

(viii) [Reserved]

(ix) Any other information required by the Form 1099-S or its instructions.

(2) * * *

(iii) *Digital assets.* For purposes of this section, a digital asset has the meaning set forth in § 1.6045-1(a)(19).

(3) *Limitation on information provided.* The information required in the case of payment made to the transferor using digital assets under paragraph (h)(1)(vii) of this section and the portion of any gross proceeds attributable to that payment required to be reported by paragraph (h)(1)(iv) of this section is not required unless the real estate reporting person has actual knowledge or ordinarily would know that digital assets were received by the transferor as payment. For purposes of this limitation, a real estate reporting person is considered to have actual knowledge that payment was made to the transferor using digital assets if the terms of the real estate contract provide for payment using digital assets.

(i) * * *

(1) *In general.* Except as otherwise provided in this paragraph (i), the term *gross proceeds* means the total cash received, including cash received from a processor of digital asset payments as described in § 1.6045-1(a)(22), consideration treated as cash received, and the value of any digital asset received by or on behalf of the transferor in connection with the real estate transaction.

(i) *Consideration treated as cash.* For purposes of this paragraph (i), consideration treated as cash received by or on behalf of the transferor in connection with the real estate transaction includes the following amounts:

(A) The stated principal amount of any obligation to pay cash to or for the benefit of the transferor in the future (including any obligation having a stated principal amount that may be satisfied by the delivery of property (other than cash) or services);

(B) The amount of any liability of the transferor assumed by the transferee as part of the consideration for the transfer or of any liability to which the real estate acquired is subject (whether or not the transferor is personally liable for the debt); and

(C) In the case of a contingent payment transaction, as defined in paragraph (i)(3)(ii) of this section, the maximum determinable proceeds, as defined in paragraph (i)(3)(iii) of this section.

(ii) *Digital assets received.* For purposes of this paragraph (i), the value of any digital asset received means the fair market value in U.S. dollars of the digital asset actually received. Additionally, if the consideration received by the transferor includes an obligation to pay a digital asset to, or for the benefit of, the transferor in the future, the value of any digital asset received includes the fair market value,

as of the date and time the obligation is entered into, of the digital assets to be paid as stated principal under such obligation. The fair market value of any digital asset received must be determined based on the valuation rules provided in § 1.6045-1(d)(5)(ii).

(iii) *Other property.* Gross proceeds does not include the value of any property (other than cash, consideration treated as cash, and digital assets) or services received by, or on behalf of, the transferor in connection with the real estate transaction. See paragraph (h)(1)(v) of this section for the information that must be included on the Form 1099-S required by this section in cases in which the transferor receives (or will, or may, receive) property (other than cash, consideration treated as cash, and digital assets) or services as part of the consideration for the transfer.

(2) *Treatment of sales commissions and similar expenses.* In computing gross proceeds, the total cash, consideration treated as cash, and digital assets received by or on behalf of the transferor shall not be reduced by expenses borne by the transferor (such as sales commissions, amounts paid or withheld from consideration received to effect the digital asset transfer as described in § 1.1001-7(b)(2), expenses of advertising the real estate, expenses of preparing the deed, and the cost of legal services in connection with the transfer).

(3) * * *

(ii) *Contingent payment transaction.* For purposes of this section, the term *contingent payment transaction* means a real estate transaction with respect to which the receipt, by or on behalf of the transferor, of cash, consideration treated as cash under paragraph (i)(1)(i)(A) of this section, or digital assets under paragraph (i)(1)(ii) of this section is subject to a contingency.

* * * * *

(o) *No separate charge.* A reporting person may not separately charge any person involved in a real estate transaction for complying with any requirements of this section. A reporting person may, however, take into account its cost of complying with such requirements in establishing its fees (other than in charging a separate fee for complying with such requirements) to any customer for performing services in the case of a real estate transaction.

* * * * *

(r) * * *

(7) *Example 7: Gross proceeds (contingencies).* The facts are the same as in paragraph (r)(6) of this section (the facts in *Example 6*), except that the agreement does

not provide for adequate stated interest. The result is the same as in paragraph (r)(6) of this section (the results in *Example 6*).

* * * * *

(10) *Example 10: Gross proceeds (exchange involving digital assets)—(i) Facts.* K, an individual, agrees in a contract for sale to pay 140 units of digital asset DE with a total fair market value of \$280,000 to J, an unmarried individual who is not an exempt transferor, in exchange for Whiteacre, which has a fair market value of \$280,000. No liabilities are involved in the transaction. P is the reporting person with respect to both sides of the transaction.

(ii) *Analysis.* P has actual knowledge that payment was made to J using digital assets because the terms of the real estate contract provide for payment using digital assets. Accordingly, with respect to the payment by K of 140 units of digital asset DE to J, P must report gross proceeds received by J of \$280,000 (140 units of DE) on Form 1099-S, *Proceeds From Real Estate Transactions*. Additionally, to the extent K is not an exempt recipient under § 1.6045-1(c) or an exempt foreign person under § 1.6045-1(g), P is required to report gross proceeds paid to K on Form 1099-DA, *Digital Asset Proceeds from Broker Transactions*, with respect to K's sale of 140 units of digital asset DE, in the amount of \$280,000 pursuant to § 1.6045-1.

(s) * * * The amendments to paragraphs (b)(1), (c)(2)(iv), (d)(2)(ii), (e)(3)(iii), (h)(1)(v) through (ix), (h)(2)(iii), (i)(1) and (2), (i)(3)(ii), (o), and (r) of this section apply to real estate transactions with dates of closing occurring on or after January 1, 2026.

■ **Par. 8.** Section 1.6045A-1 is amended by:

- 1. In paragraph (a)(1)(i), in the first sentence, removing “paragraphs (a)(1)(ii) through (v) of this section,” and adding “paragraphs (a)(1)(ii) through (vi) of this section,” in its place; and
- 2. Adding paragraph (a)(1)(vi).

The addition reads as follows:

§ 1.6045A-1 Statements of information required in connection with transfers of securities.

(a) * * *

(1) * * *

(vi) *Exception for transfers of specified securities that are reportable as digital assets.* No transfer statement is required under paragraph (a)(1)(i) of this section with respect to a specified security, the sale of which is reportable as a digital asset after the application of the special coordination rules under § 1.6045-1(c)(8). A transferor that chooses to provide a transfer statement with respect to a specified security described in the preceding sentence that is a tokenized security described in § 1.6045-1(c)(8)(i)(D) that reports some or all of the information described in paragraph (b) of this section is not subject to penalties under section 6722

of the Code for failure to report this information correctly.

* * * * *

■ **Par. 9.** Section 1.6045B-1 is amended by:

- 1. Revising paragraph (a)(1) introductory text;
- 2. Adding paragraph (a)(6);
- 3. Removing the word “and” from the end of paragraph (j)(5);
- 4. Removing the period from the end of paragraph (j)(6) and adding in its place “; and”;
- 5. Adding paragraph (j)(7).

The revision and additions read as follows:

§ 1.6045B-1 Returns relating to actions affecting basis of securities.

(a) * * *

(1) *Information required.* Except as provided in paragraphs (a)(4) and (5) of this section, an issuer of a specified security within the meaning of § 1.6045-1(a)(14)(i) through (iv) that takes an organizational action that affects the basis of the security must file an issuer return setting forth the following information and any other information specified in the return form and instructions:

* * * * *

(6) *Reporting for certain specified securities that are digital assets.* Unless otherwise excepted under this section, an issuer of a specified security described in paragraph (a)(1) of this section is required to report under this section without regard to whether the specified security is also described in § 1.6045-1(a)(14)(v) or (vi). If a specified security is described in § 1.6045-1(a)(14)(v) or (vi) but is not also described in § 1.6045-1(a)(14)(i), (ii), (iii) or (iv), the issuer of that specified security is permitted, but not required, to report under this section. An issuer that chooses to provide the reporting and furnish statements for a specified security described in the previous sentence is not subject to penalties under section 6721 or 6722 of the Code for failure to report this information correctly.

* * * * *

(j) * * *

(7) Organizational actions occurring on or after January 1, 2025, that affect the basis of digital assets described in § 1.6045-1(a)(14)(v) or (vi) that are also described in one or more paragraphs of § 1.6045-1(a)(14)(i) through (iv).

■ **Par. 10.** Section 1.6050W-1 is amended by adding a sentence to the end of paragraph (a)(2), adding paragraph (c)(5), and revising paragraph (j) to read as follows:

§ 1.6050W–1 Information reporting for payments made in settlement of payment card and third party network transactions.

(a) * * *

(2) * * * In the case of a third party settlement organization that has the contractual obligation to make payments to participating payees, a payment in settlement of a reportable payment transaction includes the submission of instructions to a purchaser to transfer funds directly to the account of the participating payee for purposes of settling the reportable payment transaction.

* * * * *

(c) * * *

(5) *Coordination with information returns required under section 6045 of the Code*—(i) *Reporting on exchanges involving digital assets.*

Notwithstanding the provisions of this paragraph (c), the reporting of a payment made in settlement of a third party network transaction in which the payment by a payor is made using digital assets as defined in § 1.6045–1(a)(19) or the goods or services provided by a payee are digital assets must be as follows:

(A) *Reporting on payors with respect to payments made using digital assets.* If a payor makes a payment using digital assets and the exchange of the payor's digital assets for goods or services is a sale of digital assets by the payor under § 1.6045–1(a)(9)(ii), the amount paid to the payor in settlement of that exchange is subject to the rules as described in § 1.6045–1 (including any exemption from reporting under § 1.6045–1) and not this section.

(B) *Reporting on payees with respect to the sale of goods or services that are digital assets.* If the goods or services provided by a payee in an exchange are digital assets, the exchange is a sale of digital assets by the payee under § 1.6045–1(a)(9)(ii), and the payor is a broker under § 1.6045–1(a)(1) that effected the sale of such digital assets, the amount paid to the payee in settlement of that exchange is subject to the rules as described in § 1.6045–1 (including any exemption from reporting under § 1.6045–1) and not this section.

(ii) *Examples.* The following examples illustrate the rules of this paragraph (c)(5).

(A) *Example 1—(1) Facts.* CRX is a *shared-service* organization that performs accounts payable services for numerous purchasers that are unrelated to CRX. A substantial number of sellers of goods and services, including Seller S, have established accounts with CRX and have agreed to accept payment from CRX in settlement of their transactions with purchasers. The agreement between sellers and CRX includes standards and

mechanisms for settling the transactions and guarantees payment to the sellers, and the arrangement enables purchasers to transfer funds to providers. Pursuant to this seller agreement, CRX accepts cash from purchasers as payment as well as digital assets, which it exchanges into cash for payment to sellers. Additionally, CRX is a processor of digital asset payments as defined in § 1.6045–1(a)(22) and a broker under § 1.6045–1(a)(1). P, an individual not otherwise exempt from reporting, purchases one month of services from S through CRX's organization. S is also an individual not otherwise exempt from reporting. S's services are not digital assets under § 1.6045–1(a)(19). To effect this transaction, P transfers 100 units of DE, a digital asset as defined in § 1.6045–1(a)(19), to CRX. CRX, in turn, exchanges the 100 units of DE for \$1,000, based on the fair market value of the DE units, and pays \$1,000 to S.

(2) *Analysis with respect to CRX's status.* CRX's arrangement constitutes a third party payment network under paragraph (c)(3) of this section because a substantial number of persons that are unrelated to CRX, including S, have established accounts with CRX, and CRX is contractually obligated to settle transactions for the provision of goods or services by these persons to purchasers, including P. Thus, under paragraph (c)(2) of this section, CRX is a third party settlement organization and the transaction involving P's purchase of S's services using 100 units of digital asset DE is a third party network transaction under paragraph (c)(1) of this section.

(3) *Analysis with respect to the reporting on P.* P's payment of 100 units of DE to CRX in return for the payment by CRX of \$1,000 in cash to S is a sale of the DE units as defined in § 1.6045–1(a)(9)(ii)(D) that is effected by CRX, a processor of digital asset payments and broker under § 1.6045–1(a)(1). Accordingly, pursuant to the rules under paragraph (c)(5)(i)(A) of this section, CRX must file an information return under § 1.6045–1 with respect to P's sale of the DE units and is not required to file an information return under paragraph (a)(1) of this section with respect to P.

(4) *Analysis with respect to the reporting on S.* S's services are not digital assets as defined in § 1.6045–1(a)(19). Accordingly, pursuant to the rules under paragraph (c)(5)(i)(B) of this section, CRX's payment of \$1,000 to S in settlement of the reportable payment transaction is subject to the reporting rules under paragraph (a)(1) of this section and not the reporting rules as described in § 1.6045–1.

(B) *Example 2—(1) Facts.* CRX is an entity that owns and operates a digital asset trading platform and provides digital asset custodial services and digital asset broker services under § 1.6045–1(a)(1). CRX also exchanges on behalf of customers digital assets under § 1.6045–1(a)(19), including nonfungible tokens, referred to as NFTs, representing ownership in unique digital artwork, video, or music. Exchange transactions undertaken by CRX on behalf of its customers are considered sales under § 1.6045–1(a)(9)(ii) that are effected by CRX and subject to reporting by CRX under § 1.6045–1. A

substantial number of NFT sellers have accounts with CRX, into which their NFTs are deposited for sale. None of these sellers are related to CRX, and all have agreed to settle transactions for the sale of their NFTs in digital asset DE, or other forms of consideration, and according to the terms of their contracts with CRX. Buyers of NFTs also have accounts with CRX, into which digital assets are deposited for later use as consideration to acquire NFTs. Once a buyer decides to purchase an NFT for a price agreed to by the NFT seller, CRX effects the requested exchange of the buyer's consideration for the NFT, which allows CRX to guarantee delivery of the bargained for consideration to both buyer and seller. CRX charges a transaction fee on every NFT sale, which is paid by the buyer in additional units of digital asset DE. Seller J, an individual not otherwise exempt from reporting, sells NFTs representing digital artwork on CRX's digital asset trading platform. J does not perform any other services with respect to these transactions. Buyer B, also an individual not otherwise exempt from reporting, seeks to purchase J's NFT–4 using units of DE. Using CRX's platform, buyer B and seller J agree to exchange J's NFT–4 for B's 100 units of DE (with a value of \$1,000). At the direction of J and B, CRX executes this exchange, with B paying CRX's transaction fee using additional units of DE.

(2) *Analysis with respect to CRX's status.* CRX's arrangement with J and the other NFT sellers constitutes a third party payment network under paragraph (c)(3) of this section because a substantial number of providers of goods or services who are unrelated to CRX, including J, have established accounts with CRX, and CRX is contractually obligated to settle transactions for the provision of goods or services, such as NFTs representing goods or services, by these persons to purchasers. Thus, under paragraph (c)(2) of this section, CRX is a third party settlement organization and the sale of J's NFT–4 for 100 units of DE is a third party network transaction under paragraph (c)(1) of this section. Therefore, CRX is a payment settlement entity under paragraph (a)(4)(i)(B) of this section.

(3) *Analysis with respect to the reporting on B.* The exchange of B's 100 units of DE for J's NFT–4 is a sale under § 1.6045–1(a)(9)(ii)(A)(2) by B of the 100 DE units that was effected by CRX. Accordingly, under paragraph (c)(5)(i)(A) of this section, the amount paid to B in settlement of the exchange is subject to the rules as described in § 1.6045–1, and CRX must file an information return under § 1.6045–1 with respect to B's sale of the 100 DE units. CRX is not required to also file an information return under paragraph (a)(1) of this section with respect to the amount paid to B even though CRX is a third party settlement organization.

(4) *Analysis with respect to the reporting on J.* The exchange of J's NFT–4 for 100 units of DE is a sale under § 1.6045–1(a)(9)(ii) by J of a digital asset under § 1.6045–1(a)(19) that was effected by CRX. Accordingly, under paragraph (c)(5)(i)(B) of this section, the amount paid to J in settlement of the

exchange is subject to the rules as described in § 1.6045–1, and CRX must file an information return under § 1.6045–1 with respect to J’s sale of the NFT–4. CRX is not required to also file an information return under paragraph (a)(1) of this section with respect to the amount paid to J even though CRX is a third party settlement organization.

* * * * *

(j) *Applicability date.* Except with respect to payments made using digital assets, the rules in this section apply to returns for calendar years beginning after December 31, 2010. For payments made using digital assets, this section applies on or after January 1, 2025.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Par. 11.** The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 12.** Section 31.3406–0 is amended by:

- 1. Revising the heading for the entry for § 31.3406(b)(3)–2;
- 2. Adding entries for §§ 31.3406(b)(3)–2(b)(6), 31.3406(g)–1(e)(1) and (2); and
- 3. Revising the entry for § 31.3406(g)–1(f).

The additions and revision read as follows:

§ 31.3406–0 Outline of the backup withholding regulations.

* * * * *

31.3406(b)(3)–2 Reportable barter exchanges and gross proceeds of sales of securities, commodities, or digital assets by brokers.

* * * * *

(b) * * *

(6) Amount subject to backup withholding in the case of reporting under § 1.6045–1(d)(2)(i)(C) and (d)(10) of this chapter.

(i) Optional reporting method for sales of qualifying stablecoins and specified nonfungible tokens.

(A) In general.

(B) Backup withholding on non-designated sales of qualifying stablecoins.

(1) In general.

(2) Non-qualifying events.

(ii) Applicable threshold for sales by processors of digital asset payments.

* * * * *

§ 31.3406(g)–1 Exception for payments to certain payees and certain other payments.

* * * * *

(e) * * *

(1) Reportable payments other than gross proceeds from sales of digital assets.

(2) Reportable payments of gross proceeds from sales of digital assets.

(i) [Reserved]

(ii) [Reserved]

(f) Applicability date.

* * * * *

■ **Par. 13.** Section 31.3406(b)(3)–2 is amended by revising the section heading and adding paragraphs (b)(6) and (c) to read as follows:

§ 31.3406(b)(3)–2. Reportable barter exchanges and gross proceeds of sales of securities, commodities, or digital assets by brokers.

* * * * *

(b) * * *

(6) Amount subject to backup withholding in the case of reporting under § 1.6045–1(d)(2)(i)(C) and (d)(10) of this chapter—

(i) *Optional reporting method for sales of qualifying stablecoins and specified nonfungible tokens—*(A) *In general.* The amount subject to withholding under section 3406 for a broker that reports sales of digital assets under the optional method for reporting qualifying stablecoins or specified nonfungible tokens under § 1.6045–1(d)(10) of this chapter is the amount of gross proceeds from designated sales of qualifying stablecoins as defined in § 1.6045–1(d)(10)(i)(C) of this chapter and sales of specified nonfungible tokens without regard to the amount which must be paid to the broker’s customer before reporting is required.

(B) *Backup withholding on non-designated sales of qualifying stablecoins—*(1) *In general.* A broker is not required to withhold under section 3406 on non-designated sales of qualifying stablecoins as defined under § 1.6045–1(d)(10)(i)(C) of this chapter.

(2) *Non-qualifying events.* In the case of a digital asset that would satisfy the definition of a non-designated sale of a qualifying stablecoin as defined under § 1.6045–1(d)(10)(i)(C) of this chapter for a calendar year but for a non-qualifying event during that year, a broker is not required to withhold under section 3406 on such sale if it occurs no later than the end of the day that is 30 days after the first non-qualifying event with respect to such digital asset during such year. A *non-qualifying event* is the first date during a calendar year on which the digital asset no longer satisfies all three conditions described in § 1.6045–1(d)(10)(ii)(A) through (C) of this chapter to be a qualifying stablecoin. For purposes of this paragraph (b)(6)(i)(B)(2), the date on which a non-qualifying event has occurred with respect to a digital asset and the date that is no later than 30 days after such non-qualifying event must be determined using Coordinated Universal Time (UTC).

(ii) *Applicable threshold for sales by processors of digital asset payments.* For purposes of determining the amount subject to withholding under section

3406, the amount subject to reporting under section 6045 is determined without regard to the minimum gross proceeds which must be paid to the customer under § 1.6045–1(d)(2)(i)(C) of this chapter before reporting is required.

(c) *Applicability date.* This section applies to reportable payments made on or after January 1, 2025. For the rules applicable to reportable payments made prior to January 1, 2025, see § 31.3406(b)(3)–2 in effect and contained in 26 CFR part 1 revised April 1, 2024.

■ **Par. 14.** Section 31.3406(g)–1 is amended by revising paragraphs (e) and (f) to read as follows:

§ 31.3406(g)–1 Exception for payments to certain payees and certain other payments.

* * * * *

(e) *Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others—*(1) *Reportable payments other than gross proceeds from sales of digital assets.* For reportable payments made after June 30, 2014, other than gross proceeds from sales of digital assets (as defined in § 1.6045–1(a)(19) of this chapter), a payor or broker is not required to backup withhold under section 3406 of the Code on a reportable payment that is paid and received outside the United States (as defined in § 1.6049–4(f)(16) of this chapter) with respect to an offshore obligation (as defined in § 1.6049–5(c)(1) of this chapter) or on the gross proceeds from a sale effected at an office outside the United States as described in § 1.6045–1(g)(3)(iii) of this chapter (without regard to whether the sale is considered effected inside the United States under § 1.6045–1(g)(3)(iii)(B) of this chapter). The exception to backup withholding described in the preceding sentence does not apply when a payor or broker has actual knowledge that the payee is a United States person. Further, no backup withholding is required on a reportable payment of an amount already withheld upon by a participating FFI (as defined in § 1.1471–1(b)(91) of this chapter) or another payor in accordance with the withholding provisions under chapter 3 or 4 of the Code and the regulations under those chapters even if the payee is a known U.S. person. For example, a participating FFI is not required to backup withhold on a reportable payment allocable to its chapter 4 withholding rate pool (as defined in § 1.6049–4(f)(5) of this chapter) of recalcitrant account holders (as described in § 1.6049–4(f)(11) of this chapter), if withholding was applied to the payment (either by the participating

FFI or another payor) pursuant to § 1.1471–4(b) or § 1.1471–2(a) of this chapter. For rules applicable to notional principal contracts, *see* § 1.6041–1(d)(5) of this chapter. For rules applicable to reportable payments made before July 1, 2014, *see* § 31.3406(g)–1(e) in effect and contained in 26 CFR part 1 revised April 1, 2013.

(2) [Reserved]

(f) *Applicability date.* This section applies to payments made on or after January 1, 2025. (For payments made before January 1, 2025, *see* § 31.3406(g)–1 in effect and contained in 26 CFR part 1 revised April 1, 2024.)

■ **Par. 15.** Section 31.3406(g)–2 is amended by adding a sentence to the end of paragraphs (e) and (h) to read as follows:

§ 31.3406(g)–2 Exception for reportable payment for which withholding is otherwise required.

* * * * *

(e) * * * Notwithstanding the previous sentence, a real estate reporting person must withhold under section 3406 of the Code and pursuant to the rules under § 31.3406(b)(3)–2 on a reportable payment made in a real estate transaction with respect to a purchaser that exchanges digital assets for real estate to the extent that the exchange is treated as a sale of digital assets subject to reporting under § 1.6045–1 of this chapter.

* * * * *

(h) * * * For sales of digital assets, this section applies on or after January 1, 2026.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 16.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 17.** Section 301.6721–1 is amended by revising paragraph (h)(3)(iii) and adding a sentence to the end of paragraph (j) to read as follows:

§ 301.6721–1 Failure to file correct information returns.

* * * * *

(h) * * *

(3) * * *

(iii) Section 6045(a) or (d) of the Code (relating to returns of brokers, generally reported on Form 1099–B, *Proceeds From Broker and Barter Exchange Transactions*, for broker transactions not involving digital assets; Form 1099–DA, *Digital Asset Proceeds from Broker Transactions* for broker transactions involving digital assets; Form 1099–S, *Proceeds From Real Estate Transactions*, for gross proceeds from the sale or exchange of real estate; and Form 1099–MISC, *Miscellaneous Income*, for certain substitute payments and payments to attorneys); and

* * * * *

(j) * * * Paragraph (h)(3)(iii) of this section applies to returns required to be filed on or after January 1, 2026.

■ **Par. 18.** Section 301.6722–1 is amended by revising paragraph (e)(2)(viii) and adding a sentence to the end of paragraph (g) to read as follows:

§ 301.6722–1 Failure to furnish correct payee statements.

* * * * *

(e) * * *

(2) * * *

(viii) Section 6045(a) or (d) (relating to returns of brokers, generally reported on Form 1099–B, *Proceeds From Broker and Barter Exchange Transactions*, for broker transactions not involving digital assets; Form 1099–DA, *Digital Asset Proceeds From Broker Transactions*, for broker transactions involving digital assets; Form 1099–S, *Proceeds From Real Estate Transactions*, for gross proceeds from the sale or exchange of real estate; and Form 1099–MISC, *Miscellaneous Income*, for certain substitute payments and payments to attorneys);

* * * * *

(g) * * * Paragraph (e)(2)(viii) of this section applies to payee statements required to be furnished on or after January 1, 2026.

Douglas W. O’Donnell,
Deputy Commissioner.

Approved: June 17, 2024.

Aviva R. Aron-Dine,
Acting Assistant Secretary of the Treasury (Tax Policy).

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37 CFR Part 210

Termination Rights, Royalty Distributions, Ownership Transfers, Disputes,
and the Music Modernization Act; Final Rule

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 210

[Docket No. 2022–5]

Termination Rights, Royalty Distributions, Ownership Transfers, Disputes, and the Music Modernization Act**AGENCY:** U.S. Copyright Office, Library of Congress.**ACTION:** Final rule.

SUMMARY: The U.S. Copyright Office is issuing a final rule regarding how the Copyright Act's derivative works exception to termination rights applies to the statutory mechanical blanket license established by the Music Modernization Act. The final rule also addresses other matters relevant to identifying the proper payee to whom the mechanical licensing collective must distribute royalties. Among other things, the Office is adopting regulations addressing the mechanical licensing collective's distribution of matched historical royalties and administration of ownership transfers, other royalty payee changes, and related disputes.

DATES: This rule is effective August 8, 2024. However, compliance by the mechanical licensing collective, other than with respect to §§ 210.27(g)(2)(ii)(B)(1), 210.29(b)(4)(i)(C), 210.29(k), and 210.30(c)(1)(i)(B), is not required until the first distribution of royalties based on the first payee snapshot taken after October 7, 2024. The Copyright Office may, upon request, extend the compliance deadlines in its discretion by providing public notice through its website.

FOR FURTHER INFORMATION CONTACT: Rhea Efthimiadis, Assistant to the General Counsel, by email at mefth@copyright.gov or telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:**I. Background**

The Copyright Office (“Office”) issues this final rule subsequent to a supplemental notice of proposed rulemaking (“SNPRM”), published in the *Federal Register* on September 26, 2023,¹ and a notice of proposed rulemaking (“NPRM”), published in the *Federal Register* on October 25, 2022.² This final rule assumes familiarity with the NPRM and SNPRM, as well as the

public comments received in response to those notices.³

While the final rule retains many elements from the SNPRM, it also adopts a number of changes in response to the public comments, including a scaling back of certain proposals. We have adopted a number of commenter suggestions where reasonable, and have striven to establish a fair and balanced approach to the issues presented in this proceeding. In particular, the Office has endeavored to find solutions to the practical and administrative concerns that were raised by commenters. We are thankful for their participation in this process.

This document first summarizes the Office's earlier proposals and the public comments. It next addresses questions raised regarding our rulemaking authority. Finally, it discusses the different parts of the final rule: termination and the derivative works exception; the copyright owner entitled to blanket license royalties; matched historical royalties; ownership transfers and royalty payee changes; disputes; the corrective royalty adjustment; and the rule's effective date and compliance deadline.

A. The NPRM

The Office commenced this proceeding after the Mechanical Licensing Collective (“MLC”) ⁴ adopted a termination dispute policy (“Termination Policy”) that conflicted with prior Office guidance and was based on an erroneous interpretation of how the Copyright Act's derivative works exception (“Exception”) to

³ The NPRM stemmed from a previous rulemaking, discussed in detail in the NPRM, that involved multiple rounds of public comments through a notification of inquiry, 84 FR 49966 (Sept. 24, 2019), a notice of proposed rulemaking, 85 FR 22518 (Apr. 22, 2020), and an *ex parte* communications process. Guidelines for *ex parte* communications, along with records of such communications, including those referenced herein, are available at <https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html>. All rulemaking activity, including public comments, as well as educational material regarding the MMA, can currently be accessed via navigation from <https://www.copyright.gov/music-modernization>.

Comments received in response to the NPRM and SNPRM are available at <https://copyright.gov/rulemaking/mma-termination/>. References to the public comments are by party name (abbreviated where appropriate), followed by “NPRM Initial Comments,” “NPRM Reply Comments,” “SNPRM Initial Comments,” “SNPRM Reply Comments,” or “*Ex Parte* Letter,” as appropriate.

⁴ The preamble uses the terms “Mechanical Licensing Collective” or “MLC” to refer to the currently designated mechanical licensing collective. The regulatory text uses the lowercase statutory term “mechanical licensing collective,” as the regulations apply to any designated mechanical licensing collective, including the current or any future designee.

termination rights applies to the statutory mechanical blanket license (“blanket license”) established by the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (“MMA”).⁵ The Office concluded it was necessary to address the legal issues more directly, including how termination law and the Exception intersect with the blanket license.⁶ In the NPRM, it explained that clarifying the issues “would provide much needed business certainty to music publishers and songwriters” and “would enable the MLC to appropriately operationalize the distribution of post-termination royalties in accordance with existing law.”⁷ The NPRM contained a detailed discussion of the procedural background leading to this rulemaking,⁸ the Office's regulatory authority,⁹ and legal background about the Copyright Act's termination provisions and the Exception.¹⁰

The Office then analyzed the application of the Exception in the context of the blanket license and preliminarily concluded that the MLC's Termination Policy was “inconsistent with the law.”¹¹ We explained that “[w]hether or not the Exception applies to a [digital music provider's (“DMP's”)] blanket license (and the Office concludes that the Exception does not), the statute entitles the current copyright owner to the royalties under the blanket license, whether pre- or post-termination.”¹² This means that “the post-termination copyright owner (*i.e.*, the author, the author's heirs, or their successors, such as a subsequent publisher grantee) is due the post-termination royalties paid by the DMP to the MLC.”¹³

The Office proposed a rule to recognize the payee under the blanket license who is legally entitled to royalties following a statutory termination.¹⁴ We also proposed to require the MLC to immediately repeal its Termination Policy in full after concluding that it was “contrary to the Office's interpretation of current law.”¹⁵ We further proposed to require the MLC to adjust any royalties distributed under the policy within 90

⁵ 87 FR 64405, 64407.

⁶ *Id.*

⁷ *Id.* (“Moreover, without the uniformity in application that a regulatory approach brings, the Office is concerned that the MLC's ability to distribute post-termination royalties efficiently would be negatively impacted.”).

⁸ *Id.* at 64406–07.

⁹ *Id.* at 64407–08.

¹⁰ *Id.* at 64408–10.

¹¹ *Id.* at 64410–11.

¹² *Id.* at 64411.

¹³ *Id.*

¹⁴ *Id.* at 64411–12.

¹⁵ *Id.* at 64412.

¹ 88 FR 65908 (Sept. 26, 2023).

² 87 FR 64405 (Oct. 25, 2022).

days to make copyright owners whole for any distributions it made based on “an erroneous understanding and application of current law.”¹⁶

After the NPRM was published, the MLC said that it voluntarily “suspended [its Termination Policy] pending the outcome of the [Office’s] rulemaking proceeding” and will “hold[] all royalties for uses of musical works that are subject to statutory termination claims beginning with the royalties for the October 2022 usage period, which would have been initially distributed in January 2023.”¹⁷ To the Office’s knowledge, the MLC continues to hold such royalties.

B. The NPRM Comments

The Office received over 40 public comments in response to the NPRM. These comments reflected the views of hundreds of interested parties, including songwriters, music publishers and administrators, record companies, public interest groups, academics, and practitioners. Most commenters, including multiple music publishers and administrators, generally supported the NPRM.¹⁸ While some commenters raised concerns with certain aspects of the NPRM,¹⁹ the National Music Publishers’ Association (“NMPA”) was the only commenter to oppose the proposed rule more broadly, though it supported the NPRM’s goal of “ensuring that royalties for uses under the Section 115(d) blanket license . . . are paid to the proper copyright owner.”²⁰

Several commenters, including the MLC, sought additional guidance from the Office on various related issues not directly addressed by the NPRM. Examples include the following:

- Application of the Exception to other types of statutory mechanical licenses;²¹
- Application of the Exception to voluntary licenses;²²
- Procedures for carrying out the proposed corrective royalty adjustment to remedy prior distributions by the MLC based on an erroneous understanding and application of the Exception;²³
- Procedures concerning notice, documentation, timing, and other matters relating to the MLC’s implementation of a termination notification;²⁴ and
- Procedures concerning termination disputes and related confidential information.²⁵

The MLC emphasized the importance of the Office providing guidance regarding its termination-related procedures, explaining that rules addressing these procedures are “essential to processing royalties in connection with statutory termination claims” and “would provide important guidance to parties involved in termination claims.”²⁶

C. The SNPRM

After considering the requests for further guidance and other comments received, the Office issued an SNPRM modifying the NPRM, providing additional detail, and expanding the NPRM’s scope. In addition to addressing the Exception, the SNPRM addressed and sought comments on other matters relevant to identifying the proper payee to whom the MLC must distribute royalties. Such matters included issues related to the MLC’s distribution of matched historical royalties and

administration of ownership transfers, other royalty payee changes, and related disputes. While requests for additional guidance largely pertained to termination-related issues, those requests and other comments suggested that more comprehensive regulations would be beneficial to the MLC, publishers, songwriters, and the wider music industry. As the SNPRM explained, “[t]he accurate distribution of royalties is a core objective of the MLC” and “[a]dopting the [supplemental proposed rule] would establish standards and settle expectations for all parties with respect to such distributions.”²⁷ At a high level, the SNPRM provided the following views and proposals beyond those in the NPRM:

- The Office’s preliminary views on the application of the Exception to matched historical royalties,²⁸ pre-2021 statutory mechanical licenses, individual download licenses, and voluntary licenses.²⁹
- Additional discussion relating to the Office’s preliminary view in the NPRM that the owner at the time of the use is entitled to distributions of blanket license royalties absent an agreement to the contrary, and a related proposal to accommodate and give effect to contractual payment arrangements that may require a different result.³⁰
- A proposal that the MLC report and distribute matched historical royalties in the same manner and subject to the same requirements that apply to the reporting and distribution of blanket license royalties.³¹
- A proposal regarding how the MLC should be notified about an ownership transfer or other royalty payee change, with detailed provisions covering different types of changes, such as those relating to contractual assignments, statutory terminations, and other changes (*e.g.*, when parties direct the MLC to pay an alternative designated payee).³²
- A proposal regarding how the MLC should implement and give effect to such payee changes.³³
- A proposal regarding the process and documentation for termination-

¹⁶ *Id.*

¹⁷ The MLC, *Policies*, <https://www.themlc.com/dispute-policy> (last visited June 14, 2024).

¹⁸ See, *e.g.*, Authors All. et al. NPRM Initial Comments at 1–3; BMG Rights Mgmt. NPRM Initial Comments at 1–2; BMG Rights Mgmt. NPRM Reply Comments at 1; ClearBox Rights NPRM Initial Comments at 2, 6–8; Fishman & Garcia NPRM Initial Comments at 1–4; Gates NPRM Reply Comments; Howard NPRM Initial Comments at 1–2; Howard NPRM Reply Comments at 2–3; King, Holmes, Paterno & Soriano LLP NPRM Initial Comments; Landmann NPRM Initial Comments; Miller NPRM Initial Comments; North Music Grp. NPRM Reply Comments at 2–3; NSAI NPRM Initial Comments at 3; Promopub NPRM Initial Comments at 1–2; Promopub NPRM Reply Comments at 1–2; Recording Academy NPRM Reply Comments at 2–3; Rights Recapture NPRM Initial Comments; SGA et al. NPRM Initial Comments at 1–2, 5; SONA et al. NPRM Initial Comments at 2–3; SONA et al. NPRM Reply Comments at 3; Songwriters NPRM Reply Comments at 1; Wixen Music Publ’g NPRM Initial Comments at 1–2.

¹⁹ See, *e.g.*, CMPA NPRM Initial Comments at 1–2; AZIM & RIAA NPRM Reply Comments at 1–2; MPA NPRM Reply Comments at 2–5.

²⁰ See generally NMPA NPRM Initial Comments; NMPA *Ex Parte* Letter (Feb. 6, 2023).

²¹ See, *e.g.*, MLC NPRM Initial Comments at 6; MLC NPRM Reply Comments at 2; ClearBox Rights NPRM Initial Comments at 6; ClearBox Rights NPRM Reply Comments at 2; Howard NPRM Initial Comments at 5; King, Holmes, Paterno & Soriano LLP NPRM Initial Comments.

²² See, *e.g.*, MLC NPRM Initial Comments at 4–6; MLC NPRM Reply Comments at 2; ClearBox Rights NPRM Initial Comments at 6; ClearBox Rights NPRM Reply Comments at 2; Howard NPRM Initial Comments at 5; Rights Recapture NPRM Initial Comments.

²³ See, *e.g.*, MLC NPRM Initial Comments at 6–8; ClearBox Rights NPRM Reply Comments at 3–4; ClearBox Rights *Ex Parte* Letter at 2–4 (June 28, 2023); Howard NPRM Initial Comments at 6; Promopub NPRM Initial Comments at 2; Promopub NPRM Reply Comments at 3; North Music Grp. NPRM Reply Comments at 2.

²⁴ See, *e.g.*, MLC NPRM Initial Comments at 10–11; ClearBox Rights NPRM Initial Comments at 8; ClearBox Rights NPRM Reply Comments at 5–6; Howard NPRM Initial Comments at 3–5; Howard NPRM Reply Comments at 2–3; SGA et al. NPRM Initial Comments at 2, 6–8.

²⁵ See, *e.g.*, MLC NPRM Initial Comments at 11–14; ClearBox Rights NPRM Reply Comments at 6.

²⁶ MLC NPRM Initial Comments at 9–10; see also MLC NPRM Reply Comments at 2.

²⁷ 88 FR 65908, 65909.

²⁸ Phrases defined in the SNPRM—*e.g.*, “historical unmatched royalties,” “matched historical royalties,” “the owner at the time of the use,” and “the owner at the time of the payment”—have the same meaning here. See *id.* at 65909–10, 65912–13.

²⁹ *Id.* at 65910–12.

³⁰ *Id.* at 65912–14.

³¹ *Id.* at 65914.

³² *Id.* at 65914–65917.

³³ *Id.* at 65917–18.

related disputes initiated with the MLC.³⁴

- A proposal regarding the resolution of all types of disputes initiated with the MLC.³⁵
- A proposal regarding certain disclosures to be made by the MLC in connection with disputes and other royalty holds.³⁶
- A proposal regarding how the MLC should administer a corrective royalty adjustment to cure any distributions it previously made under its since-suspended Termination Policy.³⁷

D. The SNPRM Comments

The Office received over 50 public comments in response to the SNPRM from a wide variety of interested parties across the music industry. Some parties supported aspects of the SNPRM,³⁸ while others were critical of certain provisions. The primary criticism addressed the question of whether the owner at the time of the use or the owner at the time of the payment should receive distributions of blanket license royalties from the MLC.³⁹ Commenters

also took issue with the Office's proposed expansion of the rule beyond the NPRM, with some commenters requesting that those new issues be removed from consideration.⁴⁰ The MLC provided a regulatory proposal that shared many similarities with the SNPRM and was "aimed at implementing certain proposals of the Office concerning statutory terminations, while omitting language concerning" various other issues that, in its view, "do not need further regulation."⁴¹

II. Rulemaking Authority

Having considered all relevant comments, the Office concludes that we have appropriate statutory authority to adopt the final rule for the reasons explained in the NPRM and SNPRM, as well as the additional reasons discussed below.⁴² As previously explained, section 702 of the Copyright Act specifically grants the Office the authority to "establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under [title 17]."⁴³ Implementation of the MMA is one of those "functions and duties" that Congress made the Office's responsibility. Specifically, the Office has been granted the authority to "conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of [the MMA pertaining to the blanket license]."⁴⁴ Several commenters explicitly supported the Office's general

rulemaking authority.⁴⁵ The only commenter to question the Office's authority was NMPA, which offered various arguments for why the Office lacks authority to issue this rule.⁴⁶ None are persuasive.

NMPA first argued that the Office has no authority under section 702 of the Copyright Act or the MMA to promulgate rules that involve substantive questions of copyright law.⁴⁷ This is clearly incorrect. The Office "has statutory authority to issue regulations necessary to administer the Copyright Act" and "to interpret the Copyright Act."⁴⁸ As the NPRM detailed, "[t]he Office's authority to interpret title 17 in the context of statutory licenses in particular has long been recognized."⁴⁹

Indeed, as the Office has previously explained, "[t]he Office exercises its authority under section 702 when it is necessary 'to interpret the statute in accordance with Congress[s] intentions and framework.'"⁵⁰ That is what the Office is doing here, just as we have done on numerous previous occasions, for example to determine that satellite carriers are not "cable systems" within the meaning of section 111 and therefore do not qualify for that statutory license,⁵¹ to state the meaning of "digital phonorecord delivery" under

³⁴ *Id.* at 65919.

³⁵ *Id.* at 65919–20.

³⁶ *Id.* at 65919.

³⁷ *Id.* at 65920–21.

³⁸ See, e.g., MAC et al. SNPRM Initial Comments at 2, 4 ("The Copyright Office's proposed rules, both initially and as altered here, accurately, clearly, concisely, and properly addresses the implementation of the MMA while maintaining and supporting the significant advances made by the MLC. We continue to enthusiastically support this proposed rule and remain thankful to the Copyright Office for addressing this area of great need by utilizing its oversight and governance authority."); Howard SNPRM Initial Comments at 1 ("I support the supplemental rulemaking and directives proposed by the Office.").

³⁹ See, e.g., MLC SNPRM Initial Comments at 1–16; NMPA SNPRM Initial Comments at 2–13; NMPA *Ex Parte* Letter at 1–2 (Jan. 24, 2024); AIMP SNPRM Initial Comments at 1–4; Combustion Music SNPRM Initial Comments; Endurance Music Grp. SNPRM Initial Comments at 1–2; Farris, Self & Moore, LLC SNPRM Initial Comments at 1–2; Boom Music SNPRM Initial Comments; Jonas Grp. Publ'g SNPRM Initial Comments; Kobalt Music SNPRM Initial Comments at 2; Liz Rose Music SNPRM Initial Comments at 1–2; Big Machine Music SNPRM Initial Comments at 1–2; Legacyworks SNPRM Initial Comments; Me Gusta Music SNPRM Initial Comments at 1–2; Relative Music Grp. SNPRM Initial Comments at 1–2; Harding SNPRM Initial Comments; Moore SNPRM Initial Comments; North Music Grp. SNPRM Initial Comments at 2; NSAI SNPRM Initial Comments at 2–5; Big Yellow Dog SNPRM Initial Comments; Reservoir Media Mgmt. SNPRM Initial Comments at 1–2; SMACKSongs SNPRM Initial Comments; Sony Music Publ'g SNPRM Initial Comments at 1–5; Spirit Music Grp. SNPRM Initial Comments at 1–3; Turner SNPRM Initial Comments at 1–2; Wiatr & Assocs. SNPRM Initial Comments; Jody Williams Songs SNPRM Initial Comments at 1; Concord Music Publ'g SNPRM Initial Comments at 1–3; ClearBox Rights SNPRM Reply Comments at 4–5; Creative Nation SNPRM Reply Comments at 1–2; The Greenroom Resource SNPRM Reply Comments at 1; MAC et al. SNPRM Reply Comments at 2; Recording Academy SNPRM Reply Comments at 3;

SONA SNPRM Reply Comments at 2–5; Universal Music Publ'g Grp. SNPRM Reply Comments at 1–5; Warner Chappell Music SNPRM Reply Comments at 3–8; DLC SNPRM Reply Comments at 2–4.

⁴⁰ See, e.g., MLC SNPRM Initial Comments at 17–20; NMPA SNPRM Initial Comments at 3–4; NMPA *Ex Parte* Letter at 2–3 (Jan. 24, 2024); Kobalt Music SNPRM Initial Comments at 3; Big Machine Music SNPRM Initial Comments at 2; NSAI SNPRM Initial Comments at 1–2; North Music Grp. SNPRM Initial Comments at 1, 3–4; MAC et al. SNPRM Reply Comments at 2–3; MAC *Ex Parte* Letter at 1–2 (Dec. 29, 2023); Recording Academy SNPRM Reply Comments at 1–2; Warner Chappell Music SNPRM Reply Comments at 2–3; ClearBox Rights SNPRM Reply Comments at 3, 10; SONA SNPRM Reply Comments at 5; DLC SNPRM Reply Comments at 1.

⁴¹ MLC SNPRM Reply Comments at 2 & App. A; MLC SNPRM Initial Comments at 17 (stating that "the Office's procedural guidance on notice and transfer procedures in the terminations context is helpful" and that "much of the proposal with respect to terminations generally addresses a regulatory need"); see also NMPA *Ex Parte* Letter at 3 (Jan. 24, 2024) (conveying "its desire for the Office to provide any guidance the MLC has requested").

⁴² 87 FR 64405, 64407–08; 88 FR 65908, 65910.

⁴³ 17 U.S.C. 702.

⁴⁴ *Id.* at 115(d)(12)(A).

⁴⁵ See, e.g., ClearBox Rights SNPRM Initial Comments at 2; SONA et al. SNPRM Initial Comments at 2; SGA et al. SNPRM Initial Comments at 2; Howard SNPRM Reply Comments at 3; Recording Academy SNPRM Reply Comments at 2; Promopub SNPRM Reply Comments at 2; MCNA et al. *Ex Parte* Letter at 2 (Mar. 15, 2024).

⁴⁶ NMPA SNPRM Initial Comments at 7–10. Despite its previous objections, NMPA's SNPRM comments appear to signal a change in its position on the Office's general rulemaking authority, though this is not entirely clear. See NMPA SNPRM Initial Comments at 2 & n.2 (stating that "[t]here is clear industry consensus on the [proposed rule requiring that all post-termination royalties under the blanket license be paid to the post-termination copyright owner], and the [Office] should adopt it immediately," but then also noting some of its previous concerns).

⁴⁷ See NMPA SNPRM Initial Comments at 7–8.

⁴⁸ *Motion Picture Ass'n of Am., Inc. v. Oman*, 750 F. Supp. 3, 6 (D.D.C. 1990), *aff'd*, 969 F.2d 1154 (D.C. Cir. 1992); see also, e.g., *Fox Tel. Stations, Inc. v. Aereokiller, LLC*, 851 F.3d 1002, 1011 (9th Cir. 2017) (recognizing that "the Copyright Office has a much more intimate relationship with Congress [than the courts] and is institutionally better equipped than we are to sift through and to make sense of the vast and heterogeneous expanse that is the Act's legislative history"); *Satellite Broad. & Commc'ns Ass'n of Am. v. Oman*, 17 F.3d 344, 345, 347–48 (11th Cir. 1994), *cert. denied*, 513 U.S. 823 (1994) (recognizing the Copyright Office's authority to issue regulations and "statutory authority to interpret the provisions of the compulsory licensing scheme" found in 17 U.S.C. 111).

⁴⁹ 87 FR 64405, 64408.

⁵⁰ 73 FR 40802, 40806 (July 16, 2008) (quoting 57 FR 3284, 3292 (Jan. 29, 1992)).

⁵¹ 57 FR 3284, 3290–92, 3296; see *Satellite Broad. & Commc'ns Ass'n of Am.*, 17 F.3d 344.

the section 115 statutory license,⁵² and to determine that internet streaming of AM/FM broadcast signals are not exempted “broadcast transmissions” within the meaning of section 114.⁵³ The Office has done this in the termination context as well, adopting a rule addressing the meaning of “executed” under section 203 in the context of gap grants.⁵⁴

Regarding the Office’s specific authority under the MMA, we have issued several rules that required analyzing substantive provisions of the statute. For example, the Office determined what constitutes “the due date for payment” under section 115(d)(8)(B)(i),⁵⁵ how the endorsement criterion for designating the MLC is to be evaluated under section 115(d)(3)(A)(ii),⁵⁶ the meaning of “producer” under section 115(d)(4)(A)(ii)(I)(aa),⁵⁷ and what constitutes minimum “good-faith, commercially reasonable efforts” under section 115(d)(4)(B).⁵⁸

NMPA also made a series of arguments based on the premise that any rulemaking authority the Office may have with respect to section 115 or other statutory licenses does not extend to other areas of the Copyright Act, like those dealing with termination.⁵⁹ These arguments, and their underlying premise, are similarly unsupported by

title 17. The MMA and section 702 provide the Office with ample authority to interpret sections 203 and 304, as well as other provisions of the Copyright Act, in the context of the blanket license and the MLC’s operations.⁶⁰

As explained in the NPRM, despite its focus on termination issues, “this rulemaking ultimately reflects the Office’s oversight and governance of the MLC’s reporting and payment obligations to copyright owners.”⁶¹ The Office has exercised its authority in this area before. As discussed in the NPRM, the Office previously issued regulations regarding the MLC’s reporting and distribution of royalties to copyright owners with “no dispute regarding the propriety or authority of the Office to promulgate [them].”⁶² In that prior proceeding, we concluded that we have “the authority to promulgate these rules under the general rulemaking authority in the MMA.”⁶³

The final rule in this proceeding is no different. It governs how the MLC is to report and distribute royalties to copyright owners, including with respect to identifying the proper royalty payee. The fact that the final rule addresses that core MLC function in a context that raises substantive questions of copyright law (like termination)—and thus requires analysis of various points of substantive copyright law (such as termination and the Exception)—does not deprive the Office of its authority to regulate how the MLC reports and pays royalties. Nor does the fact that parts of the Office’s analysis or reasoning could potentially be applied by others in contexts outside the scope of this proceeding.⁶⁴

⁵² 73 FR 66173, 66174–75 (Nov. 7, 2008).
⁵³ 65 FR 77292, 77293–95 (Dec. 11, 2000); see *Bonneville Int’l Corp. v. Peters*, 347 F.3d 485 (3d Cir. 2003).

⁵⁴ 76 FR 32316, 32316–20 (June 6, 2011). While the Office has express authority to regulate the content of notices of termination, we also referred to our authority under section 702 in adopting the rule and stated that the focus of the rulemaking was our recordation practices. *Id.* at 32319–20. Moreover, the rulemaking required the Office to opine on a substantive area of copyright law, namely whether or how the statute’s termination provisions apply to gap grants. *Id.* at 32316–17; see U.S. Copyright Office, *Analysis of Gap Grants under the Termination Provisions of Title 17* (2010), <https://www.copyright.gov/reports/gap-grant-analysis.pdf>. At least one court appears to have followed the Office’s interpretation. See *Mtume v. Sony Music Ent.*, 408 F. Supp. 3d 471, 475–76 (S.D.N.Y. 2019).

⁵⁵ 88 FR 60587, 60590–91 (Sept. 5, 2023).

⁵⁶ 84 FR 32274, 32280–84 (July 8, 2019).

⁵⁷ 85 FR 22518, 22532.

⁵⁸ 85 FR 58114, 58119 (Sept. 17, 2020). We also note that, in addition to the specific authority granted in section 115 and general authority granted in section 702, Congress gave the Office the responsibility to interpret title 17 when questions of law arise in proceedings before the Copyright Royalty Judges. 17 U.S.C. 802(f)(1)(B)(i), (f)(1)(D) (granting the Office the ability to “resolve” any “novel material question of substantive law concerning an interpretation of those provisions of [title 17] that are the subject of [a] proceeding” before the Copyright Royalty Judges and to review the Judges’ final determinations for “legal error . . . of a material question of substantive law under [title 17]”).

⁵⁹ NMPA NPRM Initial Comments at 8–10.

⁶⁰ See 17 U.S.C. 115(d)(12)(A), 702; see also, e.g., *Motion Picture Ass’n of Am., Inc.*, 750 F. Supp. at 6; *Aereokiller, LLC*, 851 F.3d at 1011; *Satellite Broad. & Commc’ns Ass’n of Am.*, 17 F.3d at 345, 347–48.

⁶¹ 87 FR 64405, 64408.

⁶² *Id.* at 64408 & n.39 (quoting 85 FR 22549, 22550–52 (Apr. 22, 2020)).

⁶³ 85 FR 22549, 22551 (quoting 17 U.S.C. 115(d)(12)) (observing that “Congress provided general authority to the Register of Copyrights to ‘conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of this subsection’”).

⁶⁴ At a minimum, this proceeding has demonstrated that it is “necessary or appropriate” to “adopt . . . regulations” “to effectuate” section 115(d)(3)(G)(i)(II), requiring the MLC to “distribute royalties to copyright owners in accordance with . . . the ownership and other information contained in the records of the [MLC].” 17 U.S.C. 115(d)(3)(G)(i)(II), (12)(A); see also, e.g., 87 FR 64405, 64407 (discussing need to revisit the termination issue more directly, including “how termination law intersects with the blanket license”); 88 FR 65908, 65909–10 (explaining that the MLC sought additional regulatory guidance “necessary” and “essential” to its operations). Thus, the current rulemaking “is consistent with

The flaw in NMPA’s argument is highlighted by considering its consequences. If the Office’s authority is as limited as NMPA suggested, it would mean that the MLC would be the one (in the absence of a lawsuit) to determine the meaning of any questioned statutory provisions. The Office’s oversight of the MLC through regulatory action cannot be frustrated when such oversight may involve addressing substantive issues of copyright law. Concluding otherwise would be contrary to the statute’s logic and Congress’s intent. Congress intentionally invested the Office with “broad regulatory authority” under the MMA, in part to oversee the MLC, such as by “thoroughly review[ing]” MLC policies “to ensure the fair treatment of interested parties.”⁶⁵

NMPA also specifically challenged the Office’s authority to adopt the corrective royalty adjustment, arguing that it is an impermissible retroactive rule and an unconstitutional taking.⁶⁶ We disagree with this characterization and address this topic in Part III.F., below.

III. Final Rule

Having reviewed and considered all comments, the Office has weighed the relevant legal, business, and practical implications and equities raised, and pursuant to its authority under 17 U.S.C. 115 and 702 is adopting a final rule regarding MLC royalty distributions. The Office finds it reasonable to adopt much of the SNPRM as final regulations, but with some significant modifications. As discussed in more detail below, the Office is adopting a final rule that is a scaled-down version of the SNPRM and applies a different solution to the issue of identifying the payee to whom the MLC must distribute royalties.

Specifically, in response to the comments that the SNPRM was too broad⁶⁷ and the MLC’s own regulatory

the Office’s practice of promulgating regulations to construe statutory terms that are critical to the administration of a statutory license administered by the Office.” 73 FR 66173, 66175.

⁶⁵ H.R. Rep. No. 115–651, at 5–6 (2018); S. Rep. No. 115–339, at 5 (2018); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees 4 (2018) (“Conf. Rep.”), https://www.copyright.gov/legislation/mma_conference_report.pdf.

⁶⁶ NMPA NPRM Initial Comments at 4–6, 12–13; NMPA *Ex Parte* Letter at 2 (Feb. 6, 2023); NMPA SNPRM Initial Comments at 2 n.2; see also CMPA NPRM Initial Comments at 1–2 (arguing against retroactivity); Warner Chappell Music SNPRM Reply Comments at 2–3 (same).

⁶⁷ See, e.g., Kobalt Music SNPRM Initial Comments at 3; Big Machine Music SNPRM Initial Comments at 2; NSAI SNPRM Initial Comments at 1–2; North Music Grp. SNPRM Initial Comments at

proposal,⁶⁸ the Office has narrowed the scope of the rule to provide the guidance the MLC sought without expanding the rule to other areas that do not appear to need regulation at this time based on the current record.⁶⁹ While some commenters would prefer that the Office not address any issues beyond those raised in the original NPRM, the Office disagrees. As discussed above, the MLC and several other commenters had requested additional guidance from the Office on various related topics. Consequently, the Office issued the SNPRM seeking public comments on a supplemental proposed rule focused on providing such guidance. When the MLC requests guidance from the Office, we will generally provide it given the oversight role we play under the MMA. The Office finds that it is reasonable and appropriate to provide such guidance here.

To the extent some commenters suggested that the Office is moving too quickly on some of these issues or has not engaged in a sufficient administrative process, the Office disagrees.⁷⁰ The Office issued the SNPRM precisely to solicit substantive comments from interested parties about these expanded topics. In doing so, the Office provided for both initial and reply comment periods as well as deadline extensions, ultimately providing parties with over two months to submit written comments. The Office also made itself available for *ex parte* meetings for several months after the period for written comments ended. Given this ample opportunity to engage with the Office on these issues, we see no reason to delay providing the MLC with the guidance it needs to operate. As always, the Office will continue to monitor the effect of the rule, and if there are any unforeseen consequences or should anything not operate as intended, we can consider amending the rule in the future.

Where parties have objected to certain aspects of the SNPRM, the Office has considered those comments and addressed these issues, as discussed

below. If not otherwise discussed, the Office has concluded that the relevant proposed provision should be adopted for the reasons stated in the NPRM or SNPRM.

A. Termination and the Exception

In the NPRM, the Office engaged in an extensive preliminary analysis that concluded that “[w]hether or not the Exception applies to a DMP’s blanket license (and the Office concludes that the Exception does not), the statute entitles the current copyright owner to the royalties under the blanket license, whether pre- or post-termination.”⁷¹ We explained that this means that “the post-termination copyright owner (*i.e.*, the author, the author’s heirs, or their successors, such as a subsequent publisher grantee) is due the post-termination royalties paid by the DMP to the MLC.”⁷²

Based on the MLC’s and other commenters’ requests for additional guidance,⁷³ the SNPRM contained additional analysis and made further preliminary conclusions, including that: (1) the Exception does not apply to matched historical royalties;⁷⁴ (2) with respect to covered activities, record companies’ pre-2021 individual download licenses and the authority obtained from them by DMPs are the only pre-2021 statutory mechanical licenses to have continued in effect after the license availability date;⁷⁵ (3) the Exception does not apply to individual download licenses;⁷⁶ and (4) the Exception may apply to some voluntary licenses, but not others.⁷⁷

Most comments addressing the Office’s termination analysis were in response to the NPRM, as parties largely did not comment on the additional analysis from the SNPRM. While many commenters agreed with the Office’s analysis,⁷⁸ others raised some concerns.⁷⁹ Several commenters, even

some who raised concerns with the Office’s analysis, supported its end result that the post-termination copyright owner is entitled to post-termination royalties under the blanket license.⁸⁰

Having considered all relevant comments, the Office is adopting the termination-related aspects of the SNPRM’s proposal as final for the reasons discussed below, as well as the reasoning in the NPRM and SNPRM in relevant part.

1. Blanket Licenses

i. Background

In the NPRM, the Office thoroughly analyzed the Exception in the context of the blanket license. In that analysis, the Office made two overarching conclusions that: (1) the Exception does not apply to blanket licenses; and (2) even if the Exception did apply, under the terms of the blanket license (*i.e.*, the applicable text of section 115 and related regulations), a terminated publisher still would not be entitled to post-termination blanket license royalties.⁸¹

In concluding that the Exception does not apply, the Office made three further overall conclusions. First, the Office concluded that “[t]o be subject to termination, a grant must be executed by the author or the author’s heirs,” and that, “[a]s a type of statutory license, the blanket license is ‘self-executing,’ such that it cannot be terminated” under section 203 or 304.⁸² The Office explained that “[i]f a blanket license cannot be terminated, then it cannot be subject to an exception to termination; the license simply continues in effect according to its terms.”⁸³

Second, the Office concluded that “[s]ection 115’s blanket licensing regime is premised on the assumption that DMPs are not preparing derivative works pursuant to their blanket licenses,” and that “where no sound recording derivative is prepared pursuant to a DMP’s blanket license,

RIAA NPRM Reply Comments at 2; A2IM & RIAA SNPRM Initial Comments at 1–4; Fishman & Garcia NPRM Initial Comments at 4; NMPA SNPRM Initial Comments at 2 n.2.

⁸⁰ See, e.g., NMPA SNPRM Initial Comments at 1–2 (“NMPA supported and continues to support the bright-line rule that the [Office] proposed to establish in the NPRM, requiring that all post-termination royalties under the Blanket License be paid to the post-termination copyright owner.”); Universal Music Publ’g Grp. SNPRM Reply Comments at 5 n.4; Warner Chappell Music SNPRM Reply Comments at 2; Kobalt Music SNPRM Initial Comments at 1; NSAI SNPRM Initial Comments at 2; Promopub SNPRM Initial Comments at 2.

⁸¹ 87 FR 64405, 64410–11.

⁸² *Id.* at 64410.

⁸³ *Id.*

1, 3–4; MAC et al. SNPRM Reply Comments at 2–3; MAC *Ex Parte* Letter at 1–2 (Dec. 29, 2023); Recording Academy SNPRM Reply Comments at 1–2; Warner Chappell Music SNPRM Reply Comments at 2–3; ClearBox Rights SNPRM Reply Comments at 3, 10; SONA SNPRM Reply Comments at 5.

⁶⁸ MLC SNPRM Reply Comments at App. A.

⁶⁹ To be clear, the Office reserves the right to regulate these other areas in the future should it become necessary or appropriate to do so.

⁷⁰ See, e.g., North Music Grp. SNPRM Initial Comments at 1, 3–4; Recording Academy SNPRM Reply Comments at 1–2; ClearBox Rights SNPRM Reply Comments at 3, 10.

⁷¹ 87 FR 64405, 64410–11.

⁷² *Id.* at 64411.

⁷³ 88 FR 65908, 65909–10.

⁷⁴ *Id.* at 65910–11.

⁷⁵ *Id.* at 65911.

⁷⁶ *Id.*

⁷⁷ *Id.* at 65911–12.

⁷⁸ See, e.g., A2IM & RIAA NPRM Reply Comments at 2; Authors All. et al. NPRM Initial Comments at 2–3; BMG Rights Mgmt. NPRM Initial Comments at 2; ClearBox Rights NPRM Initial Comments at 6–7; Fishman & Garcia NPRM Initial Comments at 1–4; King, Holmes, Paterno & Soriano LLP NPRM Initial Comments; North Music Grp. NPRM Reply Comments at 2; Recording Academy NPRM Reply Comments at 2; SGA et al. NPRM Initial Comments at 2, 5; SONA et al. NPRM Initial Comments at 2–3; King, Holmes, Paterno & Soriano LLP SNPRM Reply Comments.

⁷⁹ See NMPA NPRM Initial Comments at 2–3; NMPA *Ex Parte* Letter at 2–3 (Feb. 6, 2023); MPA NPRM Reply Comments at 2–5; see also A2IM &

that blanket license is not part of any preserved grants that make the Exception applicable.”⁸⁴ The Office explained that “[i]f no derivative work is prepared ‘under authority of the grant,’ then the Exception cannot apply,” but recognized that “[p]roponents of the Exception’s application to the blanket license might argue that the blanket license should be construed as being included within a so-called ‘panoply’ of grants pursuant to which a pre-termination derivative work of the musical work was prepared.”⁸⁵ The Office observed that the “only panoply to which the blanket license could theoretically belong would be the grant (or chain of successive grants) emanating from the songwriter and extending to the record company (or other person) who prepared the sound recording derivative licensed to the DMP.”⁸⁶ After analyzing that possibility, the Office concluded that “[t]he Exception, as interpreted by [the Supreme Court in *Mills Music, Inc. v. Snyder*],⁸⁷ should not be read as freezing other grants related to, but outside of, the direct chain of successive grants providing authority to utilize the sound recording derivative, such as the musical work licenses obtained by DMPs,” and the Office discussed several reasons explaining why.⁸⁸

Third, the Office concluded that applying the Exception to the blanket license in the manner the MLC had done previously, whereby the payee would be frozen in time, would lead to an “extreme result” because it would also freeze all other aspects of the license in time.⁸⁹ For example, “it would freeze in time everything from DMP reporting requirements and MLC royalty statement requirements to the rates and terms of royalty payments for using the license set by the [Copyright Royalty Judges].”⁹⁰

The SNPRM addressed this analysis as well.⁹¹ There, the Office described the NPRM’s conclusions about the Exception as “preliminary,” making clear that we “welcome[d] further comments and legal discussion.”⁹² The Office has considered all comments, including those raising concerns with aspects of this analysis. For the reasons discussed below, we find those concerns unpersuasive. Therefore, the Office is adopting the termination

analysis from the NPRM and SNPRM as final for the reasons discussed in the NPRM and SNPRM, subject to the further discussion below.

ii. Comments and Discussion

The principal critics of the NPRM’s analysis were NMPA and the Motion Picture Association (“MPA”). NMPA asserted that “[t]he Exception has historically been interpreted by many industry stakeholders to permit the pre-termination musical composition copyright owner to continue to receive mechanical royalties post-termination for uses of those compositions in derivative sound recordings, including in interactive streaming, provided that the mechanical license was issued pre-termination and the recording was prepared pre-termination.”⁹³ NMPA said that “[t]his interpretation was based on, *inter alia*, the Supreme Court’s decision in *Mills Music, Inc. v. Snyder*, and the Second Circuit’s decision in *Woods v. Bourne Co.*,”⁹⁴ and that “[b]ased on this interpretation, before the MMA was enacted, [DMPs], along with other Section 115 statutory licensees, continued to pay mechanical royalties to the pre-termination rights owner for uses of recordings prepared pre-termination pursuant to pre-termination mechanical licenses.”⁹⁵ NMPA stated that it “never understood the MMA to change or resolve the law of statutory termination or to provide a new or different rule applicable to Blanket Licenses.”⁹⁶ It explained its view that “the MMA addresses the termination issue in Section 115(d)(9)(A),” which was intended to “preserve the status quo.”⁹⁷

After a full review and analysis, the Office is not persuaded by NMPA’s argument. We do not dispute NMPA’s assertion that certain publishers may have adopted a different approach to termination, but this approach is not supported by the law in the context of the blanket license. As discussed further below in Part III.F., the Office is not adopting a new position, or changing the law as it relates to termination or the Exception. Nor are we contending that the MMA or blanket license altered the law as it relates to the Exception. The Office is merely stating what the law is and has always been.

In support of its approach, NMPA suggested that its view of the Exception was universally relied on as the status

quo. The comments, however, reveal otherwise. For example, ClearBox Rights said that “there has not been consistency in the history of how these royalties have been paid [with respect to the Exception], so such past practices should not be interpreted as any kind of precedent or guidance into how they should be paid in the future, or adjusted for any given period of time.”⁹⁸ NMPA even described its views with qualifying language, stating that its interpretation of *Mills Music* has been followed by “some” copyright owners and that “legal interpretations of this holding and views as to the applicability of the [Exception] to the [blanket license] may differ.”⁹⁹

Further, NMPA’s claim that section 115(d)(9)(A) supports its position is misplaced. That provision does not speak to the Exception or the preservation of any pre-MMA status quo (outside the narrow context of individual download licenses). As explained in the SNPRM, that provision, read together with section 115(d)(9)(B), provides, with respect to covered activities, that “only record companies’ pre-2021 individual download licenses and the authority obtained from them by DMPs survived the license availability date.”¹⁰⁰ The Office explained that “[b]ecause all other pre-2021 statutory mechanical licenses to engage in covered activities are no longer in effect pursuant to their own terms (*i.e.*, the statutory text), any application the Exception may or may not have had while they were in force seems to have no bearing on the MLC’s distribution of royalties for post-2021 usage.”¹⁰¹

The statute plainly states that the blanket license was “automatically substituted for and supersede[d] any existing compulsory license previously obtained under [section 115].”¹⁰² The

⁹⁸ ClearBox Rights NPRM Reply Comments at 1–2 (further stating that performing rights organizations “fairly consistently pass through to the post-termination rights holder the performance side of these very same [DMP] interactive streams”); *see also, e.g.*, King, Holmes, Paterno & Soriano LLP NPRM Initial Comments at 1 (“We have been concerned for years about some music publishers’ claims that the [Exception] entitles the original publisher of a composition to continue to collect indefinitely on mechanical licenses issued pursuant to the compulsory license provisions of the U.S. Copyright Act. Such claims do not comport with the language of the [Exception] itself or the legislative history surrounding it.”); McAnally & North *Ex Parte* Letter at 2 (Mar. 14, 2023) (asserting that views like NMPA’s are “inconsistent with our understanding of how terminations have been treated in the industry regarding payments of mechanical royalties under Section 115”).

⁹⁹ NMPA *Ex Parte* Letter at 2 (Feb. 6, 2023).

¹⁰⁰ 88 FR 65908, 65911.

¹⁰¹ *Id.*

¹⁰² *See* 17 U.S.C. 115(d)(9)(A).

⁸⁴ *Id.* at 64410–11.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ 469 U.S. 153 (1985).

⁸⁸ 87 FR 64405, 64410–11.

⁸⁹ *Id.* at 64411.

⁹⁰ *Id.*

⁹¹ 88 FR 65908, 65910.

⁹² *Id.* at 65912 n.69.

⁹³ NMPA NPRM Initial Comments at 2–3; *see also* NMPA *Ex Parte* Letter at 2 (Feb. 6, 2023).

⁹⁴ 60 F.3d 978 (2d Cir. 1995).

⁹⁵ NMPA NPRM Initial Comments at 3; *see also* NMPA *Ex Parte* Letter at 2 (Feb. 6, 2023).

⁹⁶ NMPA NPRM Initial Comments at 3.

⁹⁷ *Id.* at 3 n.5.

language NMPA highlighted—that this substitution happened “without any interruption in license authority enjoyed by [a DMP]”—simply means that the substitution did not cause there to be any gap in a DMP’s licensing authority, between the old pre-2021 statutory license and the new blanket license, that could potentially subject the DMP to an infringement claim.¹⁰³ If this language meant that all previous licensing authority remains intact indefinitely after the license availability date, then it would render the rest of the provision superfluous. There would be no need to have the blanket license substitute for and supersede the pre-2021 license because the authority provided by the pre-2021 license would continue in effect. It would also directly contradict section 115(d)(9)(B), which states that “licenses other than individual download licenses obtained under [section 115] for covered activities prior to the license availability date shall no longer continue in effect.”¹⁰⁴ Thus, the Office disagrees with NMPA’s reading of the statute.¹⁰⁵

NMPA next argued that “the phrase ‘terminated grant’ in the statutory text appears to refer to the original grant from the author to the publisher that is being terminated, and not to subsequent grants made by the publisher under the authority of that original grant.”¹⁰⁶ It asserted that “[s]ubsequent grants of the right to prepare and use derivative works made by the publisher are not the terminated grant under Sections 203 and 304 and are instead part of the ‘panoply’ of licenses preserved by the [Exception].”¹⁰⁷ Thus, in NMPA’s view, “the terminable grant that must be executed by the author is the original license from author to publisher; therefore, whether Section 115 licenses are ‘self-executing’ would be inapposite to the relevant analysis” because “[t]he subsequent grants of the right to prepare derivative works are in virtually all cases not ‘executed by the author or the author’s heirs.’”¹⁰⁸

The Office disagrees. The phrase “terminated grant” in the statutory text is not limited solely to the original grant from the songwriter to the publisher. In *Mills Music*, the Supreme Court

concluded that all three references to the word “grant” in the text of the Exception should be given a “consistent meaning,” and that each reference encompasses both the original grant and subsequent grants.¹⁰⁹ That lack of distinction between the original grant and subsequent grants was central to the Court’s holding that the Exception preserved “the total contractual relationship.”¹¹⁰ The cornerstone of the Court’s opinion was its conclusion that the successive grants were connected to each other in such a way that they both needed to be preserved under the Exception in the context at issue.¹¹¹

In asserting that the NPRM’s conclusions about the application of the Exception to the blanket license must be wrong because the subsequent grants of the right to prepare derivative works are almost always not executed by the author or the author’s heirs, NMPA misapprehends how the subsequent grants are connected to the original grant. Outside the context of a statutory license, where a songwriter makes a grant to a publisher and the publisher then makes subsequent grants to third parties (e.g., to a record company to prepare a sound recording derivative, to a DMP to make and distribute phonorecords, or an assignment of the full copyright to a different publisher), each of those subsequent grants, despite

not being executed by the songwriter or the songwriter’s heirs, can still be terminated. This is because the authority for each of those subsequent grants derives from and is dependent upon the authority conveyed by the original grant from the songwriter to the publisher. Thus, when the original grant is terminated, it also terminates the subsequent grants (subject to the possible preservation of certain contractual terms governing the utilization of pre-termination derivative works under the Exception).¹¹² It is a foundational legal principle that one cannot give what one does not have.¹¹³ In this context, what the publisher possesses with respect to the original grant, and can therefore subsequently convey to third parties, is encumbered by the songwriter’s termination rights.¹¹⁴ This concept is plainly embodied in the statute, which makes reference not only to “the grantee,” but also “the grantee’s successor in title.”¹¹⁵

The blanket license, however, operates differently. Unlike voluntary licenses, the authority a DMP has to make and distribute phonorecords of musical works under a blanket license does not derive from and is not dependent upon any authority granted by a songwriter or publisher. The blanket license is self-executing,¹¹⁶ and a DMP’s authority under it is established by Congress.¹¹⁷ Therefore, if the original grant from the songwriter to the publisher is terminated, it has no effect on the DMP’s blanket license

¹⁰⁹ *Mills Music*, 469 U.S. at 164–67 (concluding that the phrase “under the terms of the grant after its termination” “as applied to any particular licensee would necessarily encompass both the 1940 grant [from the songwriter to the publisher] and the individual license [from the publisher to the record company to prepare a sound recording derivative] executed pursuant thereto”); see *id.* at 164 (explaining that the Exception is “defined by reference to the scope of the privilege that had been authorized under the *terminated* grant and by reference to the time the derivative works were prepared”) (emphasis added); *id.* at 173 (explaining that “[p]retermination derivative works—those prepared under the authority of the *terminated* grant—may continue to be utilized under the terms of the *terminated* grant”) (emphasis added); see also Howard B. Abrams & Tyler T. Ochoa, 2 *The Law of Copyright* sec. 12:44 (2023) (“[T]he term ‘grant’ is read to include the entire chain of authority for the preparation of a derivative work.”).

¹¹⁰ *Mills Music*, 469 U.S. at 163–69 (“We are not persuaded that Congress intended to draw a distinction between authorizations to prepare derivative works that are based on a single direct grant and those that are based on successive grants.”).

¹¹¹ *Id.* at 166–69 (explaining that, with respect to the particular facts in the case, defining the relevant “terms of the grant” as “the entire set of documents that created and defined each licensee’s right to prepare and distribute derivative works” meant preserving not only the record companies’ right to prepare and distribute the derivative works, but also their corresponding duty to pay the publisher any due royalties and the publisher’s duty to pay the songwriter’s heirs any due royalties, and that if it were otherwise, then there would be no contractual or statutory obligation on the publisher or record companies to pay the songwriter’s heirs any royalties).

¹¹² Melville B. Nimmer & David Nimmer, 3 *Nimmer on Copyright* sec. 11.02[C][2] (2023) (“When *A* terminates the original grant to *B*, it follows that *B*’s license to *C* will also terminate.”).

¹¹³ *Legal Maxims*, Black’s Law Dictionary (11th ed. 2019) (“*Nemo dat quod non habet*. No one gives what he does not have; no one transfers (a right) that he does not possess.”).

¹¹⁴ Melville B. Nimmer & David Nimmer, 3 *Nimmer on Copyright* sec. 11.02[A][4][b] (2023) (“If the original grant from *A* to *B* had by its terms provided for a reversion to *A* thirty-five years after execution, *B* would lack the power to convey rights to *C* beyond such thirty-five-year period. The fact that reversion from *B* to *A* occurs by operation of law rather than by the express terms of the grant to *B* does not enlarge the rights that *B* can convey to *C*.”); see also *Int’l Ribbon Mills, Ltd. v. Arjan Ribbons, Inc.*, 325 NE2d 137, 139 (N.Y. 1975) (“It is elementary ancient law that an assignee never stands in any better position than his assignor. He is subject to all the equities and burdens which attach to the property assigned because he receives no more and can do no more than his assignor.”).

¹¹⁵ See 17 U.S.C. 203(a)(4), (b)(4); *id.* at 304(c)(4), (6)(D).

¹¹⁶ *Mills Music*, 469 U.S. at 168 n.36; see Melville B. Nimmer & David Nimmer, 3 *Nimmer on Copyright* sec. 11.02 n.121 (2023); Paul Goldstein, *Goldstein on Copyright* sec. 5.4.1.1.a (3d ed. 2023).

¹¹⁷ See also *Mills Music*, 469 U.S. at 168 n.36 (referring to section 115 statutory licenses as “a statutory *right*” belonging to the licensee) (emphasis added).

¹⁰³ See *id.*

¹⁰⁴ See *id.* at 115(d)(9)(B).

¹⁰⁵ See also 85 FR 58114, 58118 (discussing how “the statutory provisions regarding notices of [blanket] license and the transition to the blanket license must be read together, such that DMPs transitioning to the blanket license must still submit notices of license to the MLC”).

¹⁰⁶ NMPA *Ex Parte* Letter at 3 (Feb. 6, 2023); see also NMPA NPRM Initial Comments at 11 n.27.

¹⁰⁷ NMPA *Ex Parte* Letter at 3 (Feb. 6, 2023); see also NMPA NPRM Initial Comments at 11 n.27.

¹⁰⁸ NMPA NPRM Initial Comments at 11 n.27.

(other than the transfer of copyright ownership causing the royalty payee to change). Unlike a voluntary license, the grant of authority provided to the DMP under its blanket license was never encumbered by the songwriter's termination rights, so exercising those rights has no impact on the continuation of the DMP's authority. As a blanket license cannot be terminated under section 203 or 304, whether directly or indirectly, "it cannot be subject to an exception to termination; the license simply continues in effect according to its terms."¹¹⁸

MPA's criticism of the NPRM focused on a different issue, namely its concerns that the Office's legal analysis "could be read as narrowing the holdings [of *Mills Music* and *Woods*] by injecting a 'direct chain' limitation on the pre-termination grants preserved under the [Exception]."¹¹⁹ MPA argued that:

To the extent that the Office's discussion of *Mills [Music]* could be read to limit the [Exception] solely to a "direct chain" of grants, such a reading would appear to be in tension not only with the [Exception]—which provides that a derivative work prepared under authority of a grant "may continue to be used under the terms of the grant," . . . —but also the Supreme Court's interpretation of that language in *Mills [Music]*, as well as the Second Circuit's further explication of the [Exception] in *Woods v. Bourne. Mills [Music]* held that, as used in the [Exception], "the terms of the grant" means the "entire set of documents that created and defined each licensee's right to prepare and distribute derivative works." 469 U.S. at 167. The [Exception] thus encompasses the original grant from author to publisher, as well as the succeeding grants derived therefrom, potentially involving multiple licensees. See *id.* at 165–67 (emphasis added).¹²⁰

MPA further said that "[i]n some cases, an initial grant by an author to a movie studio or music publisher, and that entity's subsequent grants to third parties to for the use and distribution of derivative works, will generate 'branches' of licensing authority rather than a simple linear chain."¹²¹ According to MPA, "[t]here is nothing in the [Exception] or *Mills [Music]* . . . to suggest that a pre-termination publisher is entitled to royalties only if the pre-termination license falls within a single 'direct chain' to the party that prepared the derivative."¹²²

MPA then pointed to *Woods* for confirmation that "*Mills [Music]* is not so limited."¹²³ It stated that "[a]s further explicated in *Woods*, the Supreme Court's holding in *Mills [Music]* established that 'where multiple levels of licenses govern use of a derivative work, the "terms of the grant" encompass the original grant from author to publisher and each subsequent grant necessary to enable the particular use at issue,'" and that "[t]he effect of *Mills [Music]* is to preserve during the post-termination period the panoply of contractual obligations that governed pre-termination uses of derivative works by derivative work owners or their licensees."¹²⁴ MPA asserted that "[c]onsistent with its understanding of *Mills [Music]*, the *Woods* court upheld the pre-termination publisher's right to collect public performance royalties from [the performing rights organization,] ASCAP for post-termination performances in movies and television programs even though ASCAP's licensing relationship was outside of the 'direct chain' of authority by which the original publisher had granted synch rights to the producers of those shows."¹²⁵ MPA highlighted that the Second Circuit said that "the 'terms of the grant' included 'the provisions of the grants from [the publisher] to ASCAP and from ASCAP to the television stations' in place at the time of termination," and that "[t]he fact that the performance right in the Song [was] conveyed separately through ASCAP [was] simply an accommodation' that did not negate the applicability of the [Exception]."¹²⁶ It concluded that "[n]either the [Exception], nor *Mills [Music]* or *Woods*, limits post-termination utilization of a derivative based on the particular configuration of the relevant pre-termination grants" and that "[i]n considering the applicability of the [Exception], the correct question is not whether the user prepared the derivative pursuant to some 'direct chain' of authority, but whether the use is permitted under the entire 'set' or 'panoply' of grants emanating from the original grant by the author."¹²⁷

The Office disagrees with these assertions to the extent they relate to the blanket license. The blanket license is not part of any so-called "panoply," regardless of whether a panoply is

limited to a "direct chain" of successive grants or can include "branches" of related grants outside of that chain. As discussed above, the blanket license, as a type of statutory license, is fundamentally different from voluntary licenses. Because the authority provided by a blanket license is supplied by law and is divorced from any authority deriving from an author or any terminated grant, it is an intervening grant. It sits outside of any potential panoply of grants authorized by the author and the author's successors, assignees, licensees, and the like that form the overall transaction involving the relevant derivative work and which is subject to termination and possibly the Exception. The blanket license simply is not part of that contractual transaction.¹²⁸

Neither *Mills Music* nor *Woods* holds otherwise, as neither involved a statutory license. In both cases, all of the grants at issue were contractual and emanated from a songwriter's copyright and the authority initially conveyed by the original grant from the songwriter to a publisher.¹²⁹ Thus, neither case's holding is directly applicable to the operation of the Exception to a non-contractual intervening grant, like the blanket license. The Supreme Court, in *Mills Music*, noted that statutory licenses are different and were not at issue in the case.¹³⁰ And key language in *Woods* specifically refers to "the panoply of contractual obligations."¹³¹

The Office's conclusions about the Exception are fully consistent with *Mills Music*, both as described here and in the NPRM. Neither MPA nor any other commenter addressed the specific points made in the NPRM regarding how the Exception operates with respect to panoplies of grants,¹³² other than to assert that the overall conclusion was at odds with *Mills Music* and *Woods*.

Relying on a single out-of-context quote, MPA argued that, because *Mills Music* said that "'the terms of the grant' means the 'entire set of documents that created and defined each licensee's right to prepare and distribute derivative works,'" it must mean that the

¹²⁸ See also 17 U.S.C. 115(d)(2) (explaining how a DMP may obtain a blanket license based on its unilateral actions).

¹²⁹ *Mills Music*, 469 U.S. at 154–58; *Woods*, 60 F.3d at 981–84, 987–88.

¹³⁰ *Mills Music*, 469 U.S. at 168 n.36; see also *id.* at 185 n.12 (White, J. dissenting).

¹³¹ *Woods*, 60 F.3d at 987 (emphasis added).

¹³² See 87 FR 64405, 64410 ("The Exception, as interpreted by *Mills Music*, should not be read as freezing other grants related to, but outside of, the direct chain of successive grants providing authority to utilize the sound recording derivative, such as the musical work licenses obtained by DMPs.").

¹¹⁸ 87 FR 64405, 64410. As noted in the NPRM, this "does not mean that entitlement to royalties is fixed. It travels with ownership of the copyright." *Id.* at 64410 n.70.

¹¹⁹ MPA NPRM Reply Comments at 2.

¹²⁰ *Id.* at 4 (citing 17 U.S.C. 203(b)(1), 304(c)(6)(A)).

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* at 4–5.

¹²⁴ *Id.* (quoting *Woods*, 60 F.3d at 987).

¹²⁵ *Id.* at 5 (citing *Woods*, 60 F.3d at 984).

¹²⁶ *Id.* (all alterations, except the last one, in original) (quoting *Woods*, 60 F.3d at 987–88).

¹²⁷ *Id.*

Exception “thus encompasses the original grant from author to publisher, as well as the succeeding grants derived therefrom, potentially involving multiple licensees.”¹³³ The Office is not persuaded. Read in its proper context, the Court’s reference to “each licensee” is not referring to multiple licensees across different branches of grants involved in the preparation and utilization of a single derivative work. Rather, it is plainly referring to a single licensee for each derivative work; specifically, each record company that prepared one of the sound recording derivatives at issue in the case (which involved over 400 voluntary mechanical licenses and the preparation of over 400 sound recording derivatives).¹³⁴ This conclusion is apparent not only from reading the opinion as a whole, but from the sentence immediately preceding the one quoted by MPA, which states that “a fair construction of the phrase ‘under the terms of the grant’ as applied to any particular licensee would necessarily encompass both the 1940 grant [from the songwriter to the publisher] and the individual [voluntary mechanical] license [from the publisher to the record company] executed pursuant thereto.”¹³⁵

Other language in the Court’s opinion similarly reflects that it was only addressing direct chains of successive grants providing authority to prepare derivative works.¹³⁶ For example, the Court was “not persuaded that Congress intended to draw a distinction between authorizations to prepare derivative works that are based on a single direct grant and those that are based on successive grants.”¹³⁷ The Court found it to be “a matter of indifference . . . whether the authority to prepare the work had been received in a direct license from an author, or in a series of licenses and sublicenses.”¹³⁸ According to the Court, “Congress saw no reason to draw a distinction between a direct grant by an author to a party that produces derivative works itself and a situation in which a middleman is given authority to make subsequent grants to

such producers.”¹³⁹ It makes sense that the Court’s opinion was limited to discussing a direct chain of successive grants because that is what was at issue in the case. We continue to believe that our reading of the statute and *Mills Music*, as well as our analysis and conclusions regarding panoplies and direct chains of successive grants, are correct.¹⁴⁰

With respect to *Woods*, even if the discussion in that case could be read in the broad manner that MPA suggested, it is not clear that the court’s reasoning was correct or involved the same circumstances at issue here. Among other concerns, *Woods* did not speak to all the issues identified in the NPRM.¹⁴¹ For example, nothing in *Woods* appears to address the fact that if the word “grant” is given a consistent meaning within the text of the Exception—which, according to *Mills Music*, it should—it cannot be referring to a grant that did not provide authority to prepare the derivative work at issue.¹⁴²

The *Woods* court did not engage in this level of textual analysis. Instead, it reviewed *Mills Music* and cited a law review article for the proposition that the Exception applies to “each subsequent grant necessary to enable the particular use at issue.”¹⁴³ As discussed above, the Office does not believe *Mills Music* is so expansive. Nor does the cited law review article appear to support such a broad reading.¹⁴⁴ In any event, we emphasize that because *Woods* is distinguishable with respect to section 115 statutory licenses, it is not necessary for the Office to resolve these disagreements to adopt the final rule.

Lastly, Professors Fishman and Garcia, while supportive of most of the Office’s analysis, believed that the NPRM overestimated what would

happen if the Exception did apply to blanket licenses.¹⁴⁵ They said that the NPRM’s suggestion that all of the blanket license’s terms “would be frozen indefinitely” under the Exception, such as “the royalty rate to be paid,” “would contradict the plain terms established in [section] 115, which explicitly contemplate a variable rate to be determined by the [Copyright Royalty Judges].”¹⁴⁶ They explained that “[t]hat variability is a term of the grant,” and that to conclude otherwise “would read into the terms of the blanket license a permanently fixed royalty rate that does not exist.”¹⁴⁷ The professors then noted that the NPRM “correctly rejected the possibility of freezing the payee on the same basis.”¹⁴⁸

Considering this comment, the Office wishes to clarify this point from the NPRM. We meant to illustrate the problems with the MLC’s previous view of how the Exception would apply—that the Exception would freeze the royalty payee.¹⁴⁹ This portion of the NPRM was intended to explain that if the MLC were correct that the Exception applied in such a manner as to freeze the royalty payee, then the Exception would have to freeze everything else too, which would lead to the “extreme result.”¹⁵⁰

2. Individual Download Licenses

The Office received few comments responding to the SNPRM’s analysis regarding individual download licenses. The American Association of Independent Music and the Recording Industry Association of America (“A2IM & RIAA”) sought “to clarify ambiguity in [the sections of the proposed rule about individual download licenses and voluntary licenses] and to ensure that the proposed rule will not affect the status quo as it applies to record companies’ mechanical licensing and payment practices.”¹⁵¹ They stated that “the broadened scope of the current SNPRM in fact could have unintended consequences for record company practices in ways that are contrary to both the law and established industry practice, and in a manner that is not

¹³³ MPA NPRM Reply Comments at 4 (quoting *Mills Music*, 469 U.S. at 165–67).

¹³⁴ See *Mills Music*, 469 U.S. at 158, 167, 168 n.36.

¹³⁵ See *id.* at 166–67 (emphasis added).

¹³⁶ See Howard B. Abrams & Tyler T. Ochoa, 2 The Law of Copyright sec. 12:44 (2023) (explaining that “the Supreme Court seemed to be using the concept that the series of documents running from the author to the ultimate preparer of the derivative work should best be treated as a single transaction although it was spread over several documents executed at different times”).

¹³⁷ *Mills Music*, 469 U.S. at 163–64 (emphasis added).

¹³⁸ *Id.* at 173–74 (emphasis added).

¹³⁹ *Id.* at 172 (emphasis added).

¹⁴⁰ See 87 FR 64405, 64410–11; see also, e.g., Fishman & Garcia NPRM Initial Comments at 1–4 (agreeing with the Office’s analysis and conclusions); SONA et al. NPRM Initial Comments at 2–3 (same).

¹⁴¹ See 87 FR 64405, 64410–11.

¹⁴² See *id.* at 64411 (explaining that because “[t]he Exception’s first use of ‘grant’ is to a ‘derivative work prepared under authority of the grant,’” it “cannot be referring to the DMP’s musical work licenses pursuant to which no derivative work was prepared”).

¹⁴³ See *Woods*, 60 F.3d at 986–88 (emphasis added).

¹⁴⁴ *Woods* quotes from a law review article “describing [the] holding in *Mills Music* as ‘preserving the entire paper chain that defines the entire transaction.’” *Woods*, 60 F.3d at 987 (quoting Howard B. Abrams, *Who’s Sorry Now? Termination Rights and the Derivative Works Exception*, 62 U. Det. L. Rev. 181, 234–35 (1985) (“Abrams”).) But a few sentences earlier, that article explained that the “transaction” being referred to was the “set of transfers and licenses that ran from the author to a record company.” *Abrams* at 234.

¹⁴⁵ Fishman & Garcia NPRM Initial Comments at 4.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ See 87 FR 64405, 64411 (premising the discussion on the observation that if the Exception applies to the blanket license, “then it is not clear why it would only apply to the payee, as the MLC’s prior rulemaking comments seem to suggest”) (emphasis added).

¹⁵⁰ See *id.*

¹⁵¹ A2IM & RIAA SNPRM Initial Comments at 1.

necessary to the Office's regulation of the [MLC]."¹⁵²

Regarding individual download licenses, A2IM & RIAA agreed with parts of the Office's legal analysis of the Exception, but said that "in a regulation about the MLC's recognition of deductions from royalties that would otherwise be due under the blanket license, [the] proposed language is opaque and potentially confusing."¹⁵³ They said that:

[T]he main point is that a termination pursuant to Section 203 or 304 does not affect an individual download license, so a blanket license royalty deduction for usage pursuant to an individual download license that was appropriate prior to termination remains so after termination. The regulations should state that plainly, rather than the language that is currently proposed. In any event, it should be clear that [this provision] does *not* mean that a record company that relied on an individual download license for the creation of a sound recording cannot continue to rely on that license for distribution of the recording (in download form or otherwise) after termination of the author's publishing agreement.¹⁵⁴

The Office disagrees that the language is confusing. The provision clearly provides that the Exception does not apply to an individual download license, and further states that, for avoidance of doubt, no one may be understood to be the copyright owner or royalty payee of a work used under an individual download license based on an interpretation or application of the Exception. A2IM & RIAA's statement that a termination "does not affect an individual download license" is accurate.¹⁵⁵ But it is important to recognize that, as explained in the NPRM and SNPRM, even though "the license simply continues in effect according to its terms," under those terms, "entitlement to royalties . . . travels with ownership of the copyright."¹⁵⁶ "[W]henver a change is effectuated, whether via a contractual assignment or by operation of a statutory termination, the new owner becomes the proper payee entitled to royalties under the [individual download] license."¹⁵⁷ This provision is meant to clarify the Exception's correct operation in light of the MLC's prior views.¹⁵⁸

3. Voluntary Licenses

The Office also received few comments regarding the SNPRM's discussion of voluntary licenses. A2IM & RIAA agreed with the SNPRM's description of the complexities involved, noting that "record companies regularly obtain voluntary mechanical licenses rather than compulsory licenses, and generally pass through download rights to DMPs."¹⁵⁹ They asserted that the "[r]ights that the record company obtains from the pre-termination copyright owner are clearly preserved by the [Exception] when the record company relies on its voluntary mechanical license for the creation of either a first use recording or a cover."¹⁶⁰ Based on this, A2IM & RIAA "question the treatment of voluntary licenses in the proposed rule."¹⁶¹ They said that "[n]either the pre-termination nor post-termination copyright owner would be motivated to provide the required notice, when the effect of failing to give notice is that the DMP would in effect pay twice—once to the pre-termination copyright owner through the record company and once to the post-termination copyright owner through the MLC."¹⁶² They believed that "[r]oyalty payments would more often be handled appropriately if the default assumption were that the [Exception] *will* apply to rights obtained by a record company under a voluntary license and passed through to a DMP."¹⁶³

The Digital Licensee Coordinator ("DLC") raised similar concerns about potentially paying twice, stating that "in no event can DMPs be in the position of double-paying the royalties at issue, potentially being subject to late fees as a result of any delay in payment to the correct rightsholder."¹⁶⁴ In the DLC's view, "the most sensible approach" to dealing with disputes over the application of the Exception to voluntary licenses "would be to not require any payment from the DMP to the MLC until the dispute is resolved."¹⁶⁵

In subsequent comments, the DLC clarified that its "concern arises with respect to *the MLC's* ability to demand payment when there is a dispute related to termination that involves one or more voluntary licensors."¹⁶⁶ It explained that "the circumstances where a

voluntary license partner has a right to demand royalties notwithstanding who the MLC's records show is entitled to payment is ultimately a matter of private contract between the parties, and there is no industry standard approach to that issue."¹⁶⁷ The DLC also said that it did not believe the statute requires the MLC to hold royalties pending the resolution of disputes over the application of the Exception to voluntary licenses because such disputes are not ownership disputes within the meaning of the statute.¹⁶⁸ Based on these comments, the DLC does not appear to take issue with the possibility of double payments under the proposed rule where no dispute is initiated with the MLC.

The Office does not believe that these comments warrant any substantive changes to the provision governing voluntary licenses. First, this provision does not embody a presumption or a default rule about the Exception as A2IM & RIAA suggested. Rather, it is a regulatory application of legal precedent establishing that the pre-termination copyright owner bears the burden of proving that the Exception applies.¹⁶⁹ The Office continues to believe that "it would not be prudent to attempt to craft a rule trying to account for how the Exception may or may not apply in every possible situation" and that "the MLC should not exercise independent judgment regarding the application of the Exception to a voluntary license or its underlying grant of authority."¹⁷⁰

If the Office were to adopt the default assumption A2IM & RIAA requested, it would open the door to default assumptions in other voluntary license contexts. Moreover, doing so would require the MLC to determine, at minimum, whether the licenses at issue were indeed relied upon "for the creation of either a first use recording or a cover."¹⁷¹ That is precisely the type of fact-finding and independent judgment the Office does not believe the MLC should be required to undertake in this context.

Second, given that the DLC does not appear to share A2IM & RIAA's concern about DMPs potentially double paying, the Office does not believe that any change to this aspect of the rule is warranted. The DLC made clear that this issue is one of private contract between the relevant parties.¹⁷² Even if that were

¹⁵² *Id.*

¹⁵³ *Id.* at 2–3.

¹⁵⁴ *Id.* at 3.

¹⁵⁵ *See id.*

¹⁵⁶ 87 FR 64405, 64410–11 & n.70; 88 FR 65908, 65911 & n.67.

¹⁵⁷ 87 FR 64405, 64411; 88 FR 65908, 65911 & n.67.

¹⁵⁸ *See* 87 FR 64405, 64406–07.

¹⁵⁹ A2IM & RIAA SNPRM Initial Comments at 3.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.* at 4.

¹⁶³ *Id.*

¹⁶⁴ DLC SNPRM Initial Comments at 3–4.

¹⁶⁵ *Id.* at 4.

¹⁶⁶ DLC *Ex Parte* Letter at 2 (Mar. 4, 2024).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 2–3.

¹⁶⁹ 88 FR 65908, 65912.

¹⁷⁰ *Id.*

¹⁷¹ *See* A2IM & RIAA SNPRM Initial Comments at 3–4.

¹⁷² DLC *Ex Parte* Letter at 2 (Mar. 4, 2024).

not the case, the possibility of making double payments in this context does not appear to be any different than in other contexts where a DMP may be caught in the middle of a dispute between purported copyright owners. Any time someone claims to be the owner of a copyright purportedly licensed to a DMP by someone else, it will need to decide which party to pay. Depending on the relevant contract's terms, the DMP may well decide to pay both parties to limit its potential liability for failing to pay the party who ultimately prevails in the dispute. Thus, the situation that could arise under the rule does not appear to be a special one necessitating a regulatory solution.

With respect to the DLC's request that DMPs not be required to pay royalties to the MLC to be held pending the resolution of a dispute *initiated with the MLC*, the Office disagrees. As the Office explained in the SNPRM, even though "a dispute as to the application of the Exception is not a dispute over ownership," "a pre-termination copyright owner [should] be able to initiate a dispute with the MLC over the application of the Exception to a particular voluntary license or its underlying grant of authority, and . . . the MLC should hold applicable royalties pending resolution of such a dispute."¹⁷³

Even if such a royalty hold is not required by the statute, the Office nevertheless finds it to be a reasonable and prudent approach to the administration of such disputes, as it ensures that the relevant funds will be available upon the resolution of the dispute. As between allowing a DMP to hold the relevant royalties versus the MLC, the more appropriate approach is for them to be held by the MLC, rather than a DMP with whom the purported copyright owner may have no relationship. Moreover, even if the Office did not require this, a DMP would risk late fees, or even default and termination of its blanket license, if it declined to pay the applicable royalties to the MLC and the voluntary licensor does not prevail in the dispute. Thus, the final rule has been clarified to state that the MLC shall invoice the relevant DMP for the applicable royalties.

The DLC asked that if the Office adopts this approach, we "provide guidance on how any interest accrued by the MLC during the pendency of a termination dispute is handled."¹⁷⁴ Specifically, it requested that "where resolution of the dispute results in a service paying the voluntary licensor,

the interest should be paid back to the service (with any requirement to pay that interest onto the voluntary licensor dictated by the terms of the voluntary license)." ¹⁷⁵ The DLC further said that "where resolution of the dispute results in payment being made by the MLC to a blanket licensor, then any interest earned should be used to offset the MLC's administrative costs."¹⁷⁶

The Office had proposed that royalties held in connection with these kinds of disputes accrue interest, but did not elaborate further.¹⁷⁷ Our intent was for the MLC to hold royalties in the same manner as any other held royalties under section 115(d)(3)(H)(ii).¹⁷⁸

The final rule makes three clarifications regarding the funds held due to a termination-related dispute involving a voluntary license. First, the applicable funds shall be held by the MLC in the same manner and at the same interest rate as any other held funds. Second, where the resolution of the dispute results in payment being made by the MLC pursuant to a blanket license, that payment must include accrued interest. In that situation, the Office sees no reason why the MLC or DMPs (through an offsetting of the MLC's costs) should profit from the fact that there was a dispute. Third, where the resolution of the dispute results in a DMP paying royalties to a voluntary licensor, the MLC must promptly return the held funds, including accrued interest, to the DMP, who then may or may not be required to pass that interest on to the voluntary licensor depending on the terms of their agreement.

The Office disagrees with the MLC that "under the explicit language of [section 115(d)(3)(H)], interest earned . . . can only be for the benefit of copyright owners," such that "such accrued interest *cannot* be transmitted to [DMPs] for their own benefit (or to be disposed of in their discretion), even where royalties are ultimately refunded to [DMPs] as associated with voluntary licenses."¹⁷⁹ Section 115(d)(3)(H) does not apply in the context of funds held during disputes over the application of the Exception to voluntary licenses.

First, section 115(d)(3)(H) provides requirements for the holding of royalties and accrual of interest with respect to "unmatched" works.¹⁸⁰ As discussed above, disputes over the application of the Exception are not ownership

disputes.¹⁸¹ Since ownership is not in question, and the owner would need to already be registered with the MLC for there to even be a dispute of this kind, the works at issue in such a dispute would not be "unmatched" within the meaning of the statute.¹⁸²

Second, section 115(d)(3)(H) does not apply through section 115(d)(3)(G)(i)(III)(bb), which provides that the MLC shall "deposit into an interest-bearing account, as provided in subparagraph (H)(ii), royalties that cannot be distributed due to . . . a pending dispute before the dispute resolution committee of the [MLC]." ¹⁸³ Such disputes are described in section 115(d)(3)(K)(i) as "disputes relating to ownership interests in musical works licensed under this section."¹⁸⁴ The Office reiterates that a dispute over the application of the Exception is not an ownership dispute. It is a dispute over the legal effect of a valid termination.¹⁸⁵

For these reasons, the Office is regulating how the MLC should handle these types of disputes and the associated royalties and interest. With respect to the interest issue, we believe the most equitable approach is for the MLC to pay the interest along with the royalties, regardless of to whom such royalties are paid. The reason for requiring the accrual of interest is to make the applicable party whole for the time-value of money while the dispute is pending resolution. The Office is requiring the interest rate to be the same as for funds held under section 115(d)(3)(H)(ii) because that is a rate that Congress, by enacting it as part of the MMA, has found to be reasonable. Where there is a voluntary license at issue, whether the DMP or the voluntary licensor is to be made whole is up to the relevant agreement. Therefore, depending on the terms of the agreement, either the DMP will be permitted to retain the interest for itself or will be required to pay it through to the voluntary licensor. A voluntary licensor should not gain a benefit beyond the terms of its agreement simply because the Office is requiring the disputed funds to be held at the MLC rather than at the DMP.

¹⁸¹ 88 FR 65908, 65919.

¹⁸² See 17 U.S.C. 115(e)(35) ("The term 'unmatched', as applied to a musical work (or share thereof), means that the copyright owner of such work (or share thereof) has not been identified or located.").

¹⁸³ See *id.* at 115(d)(3)(G)(i)(III)(bb).

¹⁸⁴ *Id.* at 115(d)(3)(K)(i).

¹⁸⁵ 88 FR 65908, 65919.

¹⁷⁵ *Id.* at 3 n.10.

¹⁷⁶ *Id.*

¹⁷⁷ 88 FR 65908, 65926.

¹⁷⁸ 17 U.S.C. 115(d)(3)(H)(ii)(I).

¹⁷⁹ MLC *Ex Parte* Letter at 5–6 (Mar. 22, 2024).

¹⁸⁰ See 17 U.S.C. 115(d)(3)(H).

¹⁷³ 88 FR 65908, 65919.

¹⁷⁴ DLC *Ex Parte* Letter at 3 (Mar. 4, 2024).

B. The Copyright Owner at the Time of the Use Versus the Copyright Owner at the Time of the Payment

In both the NPRM and SNPRM, the Office proposed that the copyright owner at the time of the use is legally entitled to royalty distributions from the MLC unless the MLC is directed otherwise. In response to the SNPRM, the Office received numerous comments from publishers, songwriters, and other industry stakeholders expressing concern with that approach. As discussed below, their concerns related to whether the Office's understanding of the law conflicted with current music industry royalty administration practices or would cause administrative challenges for the MLC. In this final rule, the Office is adopting our earlier proposal with some modifications to address these operational concerns.

1. Background

In addressing whether the owner at the time of the use or the owner at the time of the payment is entitled to blanket license royalties, the NPRM stated that a copyright owner is entitled to blanket license royalties at the moment in time when the use of the relevant musical work by a DMP occurs.¹⁸⁶ The Office refers to this understanding as the “owner at the time of the use” approach.

The SNPRM provided further analysis of this approach, concluding that “it appears that, absent an agreement to the contrary, the copyright owner who can sue a DMP for infringement due to non-payment of royalties under the blanket license is the copyright owner at the time the infringement was committed—i.e., at the time of the use. It, therefore, seems reasonable to the Office for that owner to be the one to whom such royalties are paid by the MLC.”¹⁸⁷ The Office's conclusion that the owner at the time of the use is entitled to the royalty distribution was based on both the MMA and broader copyright law principles.¹⁸⁸ The SNPRM proposed regulatory text identifying the owner at the time of the use as the legally entitled party.

The Office, recognizing the importance of giving effect to private contracts that may call for different payment arrangements, also proposed that the rule “would only establish the owner at the time of the use as the default payee—i.e., the proper payee to whom the MLC must distribute royalties and any other related amounts under

the blanket license in the absence of an agreement to the contrary.”¹⁸⁹ We then proposed additional provisions to govern notification of the MLC about alternative payee designations, such as through letters of direction, “to accommodate and give effect to contractual payment arrangements that deviate from this default rule.”¹⁹⁰

Finally, the NPRM also proposed that the MLC should use the last day of the relevant monthly reporting period to identify the proper copyright owner for that month's royalty distribution. The Office suggested that doing so would be in line with the monthly reporting and royalty distribution process created by the MMA and our regulations and would make the rule reasonably administrable for the MLC, compared to requiring the MLC to identify the copyright owner entitled to royalties on a day-to-day basis.¹⁹¹ The Office sought comments on this proposed approach, including whether some other point in time might be appropriate.¹⁹²

2. Comments

Comments from publishers, songwriters, and other industry stakeholders expressed concern with the owner at the time of the use approach.¹⁹³ Many of these parties favored an approach where royalties

would be distributed to the copyright owner identified in the MLC's records as of the date of each monthly royalty distribution. The Office refers to this as “the owner at the time of the payment” approach.

At a high level, commenters' primary concerns with the owner at the time of the use approach were practical ones. Specifically, they asserted that this approach is not a standard practice in the music industry and is contrary to how industry contracts generally work, that it will be burdensome and disruptive across the industry (including to the MLC), and that it will result in inaccurate and delayed payments (including to songwriters).¹⁹⁴

A few commenters supported the Office's legal conclusions regarding the proper copyright owner who is entitled to blanket license royalties.¹⁹⁵ Others suggested a bifurcated approach to addressing the issue. For example, the Music Artists Coalition (“MAC”) said that, in the termination context, the payee should be the owner at the time of the use, but for everything else, it should be the owner at the time of the payment.¹⁹⁶ Similarly, NMPA, as a “compromise,” proposed regulatory text based on the NPRM that “applies a time of use rule solely in the termination context.”¹⁹⁷ It argued, however, “that a rule providing for payment to the owner at the time of distribution in all contexts is the more appropriate one.”¹⁹⁸

3. Legal Entitlement to Blanket License Royalties

Despite the lack of support from commenters, few addressed the

¹⁸⁹ *Id.* at 65913.

¹⁹⁰ *Id.* at 65913–14, 65916–17.

¹⁹¹ 87 FR 64405, 64412.

¹⁹² *Id.*

¹⁹³ See, e.g., MLC SNPRM Initial Comments at 1–16; NMPA SNPRM Initial Comments at 2–13; NMPA *Ex Parte* Letter at 1–2 (Jan. 24, 2024); AIMP SNPRM Initial Comments at 1–4; Combustion Music SNPRM Initial Comments; Endurance Music Grp. SNPRM Initial Comments at 1–2; Farris, Self & Moore, LLC SNPRM Initial Comments at 1–2; Boom Music SNPRM Initial Comments; Jonas Grp. Publ'g SNPRM Initial Comments; Kobalt Music SNPRM Initial Comments at 2; Liz Rose Music SNPRM Initial Comments at 1–2; Big Machine Music SNPRM Initial Comments at 1–2; Legacyworks SNPRM Initial Comments; Me Gusta Music SNPRM Initial Comments at 1–2; Relative Music Grp. SNPRM Initial Comments at 1–2; Harding SNPRM Initial Comments; Moore SNPRM Initial Comments; North Music Grp. SNPRM Initial Comments at 2; NSAI SNPRM Initial Comments at 2–5; Big Yellow Dog SNPRM Initial Comments; Reservoir Media Mgmt. SNPRM Initial Comments at 1–2; SMACKSongs SNPRM Initial Comments; Sony Music Publ'g SNPRM Initial Comments at 1–5; Spirit Music Grp. SNPRM Initial Comments at 1–3; Turner SNPRM Initial Comments at 1–2; Wiatr & Assocs. SNPRM Initial Comments; Jody Williams Songs SNPRM Initial Comments at 1–2; Concord Music Publ'g SNPRM Initial Comments at 1–3; ClearBox Rights SNPRM Reply Comments at 4–5; Creative Nation SNPRM Reply Comments at 1–2; The Greenroom Resource SNPRM Reply Comments at 1; MAC et al. SNPRM Reply Comments at 2; Recording Academy SNPRM Reply Comments at 3; SONA SNPRM Reply Comments at 2–5; Universal Music Publ'g Grp. SNPRM Reply Comments at 1–5; Warner Chappell Music SNPRM Reply Comments at 3–8; DLC SNPRM Reply Comments at 2–4.

¹⁹⁴ Examples of other issues raised by the comments include that: it may upset commercial expectations and cause problems with financial modeling and reporting; it may lead to an increase in fraudulent claims; implementation would require the development of new data and processing systems and new reporting formats and standards across the entire industry that will be costly and time-consuming to create; once a publisher's or administrator's rights period expires, they should not be burdened with the expense and liability of needing to ensure that any future income they receive flows through to the current owner to whom rights have been transferred; former publishers and administrators are not set up to distribute royalties to former songwriter partners, and practically would not have current contact or banking information available to make such distributions to their former songwriters; the choice of songwriters to change publishers or administrators should be honored, and they should not be forced to continue a relationship with their former representative with respect to these royalties that may be inefficient or lack transparency and accountability; it will lead to lower match rates and more unmatched royalties at the MLC, especially for pre-2021 periods.

¹⁹⁵ See, e.g., Howard SNPRM Initial Comments at 1–2; King, Holmes, Paterno & Soriano LLP SNPRM Reply Comments.

¹⁹⁶ MAC *Ex Parte* Letter at 2 (Dec. 29, 2023).

¹⁹⁷ NMPA *Ex Parte* Letter at 2 (Jan. 24, 2024).

¹⁹⁸ *Id.*

¹⁸⁶ 87 FR 64405, 64412.

¹⁸⁷ 88 FR 65908, 65913.

¹⁸⁸ See *id.* at 65912 (reflecting the Office's statutory analysis).

statutory text or the Office's legal analysis. Only NMPA and the MLC provided substantive arguments that the MMA's statutory language and legislative history support the MLC distributing royalties to the owner at the time of the payment.¹⁹⁹

NMPA conceded that the Office's proposal "is not based on an unreasonable legal interpretation." At the same time, it asserted that "unless the statute is clear, a legal interpretation of relevant statutory provisions should not cause disruption in a private, functioning market."²⁰⁰ It also disagreed with the Office's statutory analysis and proposed a different reading. NMPA's statutory arguments referred to sections 115(d)(3)(G)(i)(II) and 115(d)(3)(J)(i) (provisions governing royalty distributions), stating that they must be read together with sections 115(d)(3)(E)(i) and 115(d)(3)(E)(ii)(II)–(III) (provisions governing the MLC's ownership database). Relying on those provisions, NMPA stated:

The MLC is . . . not directed by statute to maintain . . . historical copyright ownership or chain of title information within its musical works database. Because the MLC does not maintain in the musical works database records that would enable it to identify the "copyright owner" at the precise time of use, and the "copyright owner" as identified in the musical works database is always the then-current copyright owner (and not the owner at the time of use or at some other prior time), the direction to pay "copyright owners in accordance with . . . the ownership and other information contained in the records of [the MLC]" should be read as a direction to pay the owner at the time of payment.²⁰¹

NMPA then referred to section 115(d)(3)(I), asserting that "once a match is made, all the accrued royalties with respect to such previously unmatched work are paid to the then-current copyright owner to which the work has been matched. There is no requirement for the MLC to determine which portion of those royalties may relate to uses made at a time when a

different (potentially not yet identified) copyright owner owned the work."²⁰² NMPA concluded by stating that it "does not believe that the sections referred to by the [Office] support a different conclusion," as those provisions "do not address the issue of who has the statutory right to receive Blanket License royalty payments."²⁰³

The MLC made similar statutory arguments, referencing some of the MMA's same sections,²⁰⁴ as well as its legislative history.²⁰⁵ Similar to NMPA, the MLC asserted that "[t]he MMA directive to distribute royalties based on the 'information in [its] records' is most appropriately read to mean that The MLC is to distribute royalties to the copyright owners' current registered payee."²⁰⁶

The Office acknowledges the practical consequences of our analysis in the SNPRM. However, those practicalities do not create legal entitlements or change the terms of title 17, absent contractual or other arrangements. While sections 115(d)(3)(G)(i)(II) and 115(d)(3)(I) provide the "copyright owner" with legal entitlement to the royalties, neither they nor the other cited provisions speak to *which* copyright owner possesses such entitlement between the owner at the time of the use or the owner at the time of the payment.²⁰⁷ That is why the Office engaged in the analysis it did in the NPRM and SNPRM.²⁰⁸

²⁰² *Id.* at 12–13.

²⁰³ *Id.* at 13.

²⁰⁴ MLC SNPRM Initial Comments at 4–7 (referencing 17 U.S.C. 115(d)(3)(G)(i)(II), 115(d)(3)(J)(i), 115(d)(3)(E)(i)–(ii), and 115(d)(3)(I)).

²⁰⁵ *Id.* at 4–11. Regarding legislative history, the MLC primarily pointed to there being "no mention or contemplation of the creation of a database that includes temporal histories of past ownership" and that a description of the provisions concerning market share-based distributions of unclaimed royalties "conveys an understanding that royalties would be paid to the entities that *currently* represent songwriters, not to an entity that may have represented the songwriter in the past but is no longer authorized to do so." *Id.* at 8–9 (citing H.R. Rep. No. 115–651, at 7–9, 13 and S. Rep. No. 115–339, at 8–9, 14).

²⁰⁶ *Id.* at 5–6.

²⁰⁷ Nor do these provisions necessarily require that there be only a single payee contained in the MLC's records for each work (or share). At best, these provisions are silent on that issue. The MLC's reliance on legislative history is similarly misplaced, as their cited references also do not appear to directly speak to this issue. In particular, market share-based distributions of unclaimed royalties are a unique feature of the MMA, and whatever the meaning of the specific provisions governing that special type of distribution—which is a matter beyond the scope of this proceeding—they do not speak to the legal entitlement to or distribution requirements for blanket license royalties that have not yet become "unclaimed" within the meaning of the statute. See 17 U.S.C. 115(d)(3)(J), (e)(34).

²⁰⁸ 88 FR 65908, 65912 (explaining that the analysis regarding the owner at the time of the use

The MMA's references to the MLC's records do not resolve this issue. They merely provide instructions as to *how* the MLC shall distribute royalties to legally entitled copyright owners. Such distributions must be made to such copyright owners "in accordance with . . . the ownership and other information contained in the records of the [MLC]." ²⁰⁹ Those records contain important information about how to make the distribution, including contact, banking, and other information about the owner, as well as whether payment is to be made to an administrator or other representative or designee.²¹⁰

Of course, the statute's direction to the MLC to make distributions based on the information in its records does not resolve any underlying dispute regarding who is entitled to the royalty distribution. Clearly, the MLC can only distribute royalties based on known information. But what the MLC "knows," based on its records, could turn out to be wrong, for example, if an imposter managed to successfully register a fraudulent ownership claim, or a legitimate copyright owner accidentally but erroneously claimed a work in good faith. If the statute is understood to confer entitlement to the royalties on whomever is identified in the MLC's records, it creates a conflict with the rest of the statutory text that confers this entitlement on the copyright owner. Moreover, such a reading would provide perverse incentives for parties to race to submit as many fraudulent claims to the MLC as possible in the hope of gaining such legal entitlement. Congress did not intend to create such an absurd scheme, whereby claimants who may be intentionally lying can obtain legal entitlement to royalties for uses of copyrighted works instead of the actual copyright owners.

Thus, while the individual or entity legally entitled to the royalties and the individual or entity actually receiving the distribution from the MLC will, in most cases, be the same, this will not always be the case. If they are not the same, being identified in the MLC's records alone will not alter or prejudice the true copyright owner's legal entitlement to those royalties. The Office concludes that this is the only reasonable way to read the MMA's

versus the owner at the time of the payment issue concerned the Office's proposal "[t]o codify its preliminary conclusion that the statute entitles the 'current copyright owner' to the royalties under the blanket license").

²⁰⁹ See 17 U.S.C. 115(d)(3)(G)(i)(II).

²¹⁰ See, e.g., 37 CFR 210.31(b)(1)(iii), (b)(1)(v)(D).

¹⁹⁹ NMPA SNPRM Initial Comments at 11–13; MLC SNPRM Initial Comments at 4–11. NMPA also made an argument based on language used by the Office in the NPRM's analysis of the Exception which stated that the "current copyright owner" is entitled to blanket license royalties, that owner "can change over time" and, after such a change, "the new owner becomes the proper payee." NMPA SNPRM Initial Comments at 11 (citing 87 FR 64405, 64411; 88 FR 65908, 65912). To clarify, the Office's use of the term "current" was intended to identify that the proper payee is the copyright owner concurrent with the time the work was used. While the last copyright owner in time may be the proper payee, we were not suggesting that this is necessarily always the case.

²⁰⁰ NMPA SNPRM Initial Comments at 11.

²⁰¹ *Id.* at 12 (second and third alterations in original).

instructions to the MLC regarding distributions.

With respect to the Office's further analysis contained in the NPRM and SNPRM, to the extent NMPA or the MLC is suggesting that Congress meant to establish a special exception regarding copyright ownership or royalty entitlement in connection with the blanket license, the Office disagrees. As explained in the SNPRM, reading section 501(b) in conjunction with section 115(d)(4)(E)(ii)(II) (which directly references section 501), "it appears that, absent an agreement to the contrary, the copyright owner who can sue a DMP for infringement due to non-payment of royalties under the blanket license is the copyright owner at the time the infringement was committed—*i.e.*, at the time of the use."²¹¹ This is the best reading of the statute: that Congress expected the party who is legally entitled to the royalties and the party who is legally permitted to sue a DMP for infringement for the nonpayment of such royalties to be one and the same. That understanding is best reflected in section 115(d)(4)(E)(ii)(II)'s cross reference to section 501. If Congress had intended an exception to the operation of section 501(b) for infringement cases related to the blanket license, it would have articulated one. The Office recognizes that legal entitlements can be varied by contract, but that variation is not relevant to understanding how the statute works absent any such agreement's terms.

Some commenters suggested to the Office that potential concerns over the time of use approach are addressed *through contract*.²¹² But contract terms stating that acquiring publishers will be paid royalties for pre-acquisition uses of musical works imply agreement with the Office's conclusions about default royalty entitlement *in the absence* of a relevant agreement. Additionally, most of the comments addressing the time of use approach focused on concerns related to business practices (*e.g.*, paperwork, royalty processing, data tracking) rather than the law. While such concerns are relevant to the practical administrability of the rule, and support certain changes the Office ultimately made to the final rule (which

are discussed below), they have no bearing on the statutory analysis discussed above or in the NPRM or SNPRM.

Based on the foregoing, as well as the relevant discussion in the NPRM and SNPRM, the Office is adopting the owner at the time of the use rule as final, but only with respect to identifying who is legally entitled to blanket license royalties under the statute as a default matter. Unlike the SNPRM, the final rule does not mandate that the MLC may only make distributions to either the owner at the time of the use or an alternative payee specifically designated by such owner.²¹³ Rather, it contains a new provision (detailed in the section below) governing how the MLC is to make royalty distributions based on the information in its records.

As discussed above, the MLC's records are not determinative with respect to who is legally entitled to royalties. At the same time, the Office agrees with NMPA and the MLC that section 115(d)(3)(G)(i)(II) directs the MLC to make distributions in accordance with the information in its records.²¹⁴ The Office has therefore decided to adopt two provisions—one that describes who is legally entitled to the royalties and another that directs to whom the MLC shall distribute royalties. The two provisions avoid confusion, making clear that the MLC's distribution does not mean that the recipient is legally entitled to those royalties, but instructing the MLC regarding the distributions that it should make. Adopting regulations directing the MLC to act, unaccompanied by regulations identifying who is legally entitled to the royalties, could create a misunderstanding regarding proper application of the law. But, as discussed below, aligning the legal entitlement with the directive to the MLC in all cases would be administratively infeasible. The new distribution provision instead enables the MLC to make royalty distributions to the owner at the time of the payment in accordance with the standard industry

practice for which commenters expressed virtually universal support.

Some commenters continued to voice concerns with the Office articulating who is legally entitled to the royalties as a default matter, even when coupled with the new distribution provision discussed below.²¹⁵ The Office has considered these concerns, but declines to remove the entitlement provision from the final rule. Especially considering the new distribution provision discussed below, the Office believes it is important to provide a clear statement of the party who is legally entitled to blanket license royalties as a default matter.

First, the Office is always mindful of potential unintended consequences that may stem from its rules. To the extent the Office's legal conclusions may differ from the practices of certain industry participants, those differences seem to be based on expectations arising out of contracts or business norms, not title 17. Moreover, failure to explain that entitlement to royalties is based on the time of the use could lead to confusion and the mistaken impression that the MLC's royalty distributions, which are based on information in its records at the time of the payment—principally for administrative convenience—reflects a determination of entitlement. On balance, the best way to minimize confusion is for the Office to articulate our interpretation of the statute.

Second, the Office disagrees with the argument that the rule is unnecessary because private agreements will govern anyway. That argument presupposes that every private agreement will speak to this issue. Nothing in the record indicates that this is universally true, indicating there is at least some subset of contracts as to which this provision will be applicable.²¹⁶ Moreover, this argument presupposes that all transfers are contractual, which is incorrect.

Finally, the Office disagrees that the existence of non-contractual transfers, like intestate succession or bankruptcy, weigh against this rule, as their existence does not change the statutory analysis discussed above and in the SNPRM. The Office has, however, clarified in the final rule that the entitlement to royalties can be

²¹³ Despite this change, the final rule still provides that the relevant owner is the owner as of the last day of the monthly reporting period in which the work is used pursuant to a blanket license. While the Office's original reasoning for that was partially based on concerns about requiring the MLC to manage day-to-day ownership changes occurring mid-month, it also rested on the fact that the MMA established a monthly-based reporting scheme for DMPs. 87 FR 64405, 64412. The Office relies on the latter in adopting the final rule. See 17 U.S.C. 115(d)(4)(A).

²¹⁴ 17 U.S.C. 115(d)(3)(G)(i)(II).

²¹⁵ See NMPA *Ex Parte* Letter at 1–2 (Jan. 24, 2024); MLC *Ex Parte* Letter at 3 (Feb. 5, 2024); MAC & NSAI *Ex Parte* Letter at 1 (Feb. 12, 2024).

²¹⁶ The Office, of course, does not mean to suggest that this provision should in any way override the intent of contracting parties if an agreement is ambiguous. If the parties disagree as to whether an agreement conveyed the entitlement to the applicable royalties, the usual standards under applicable state law for construing private contracts would still apply. The MLC should treat any such disagreement like an ownership dispute.

²¹¹ 88 FR 65908, 65913.

²¹² See, *e.g.*, MLC SNPRM Initial Comments at 11; NMPA SNPRM Initial Comments at 4–5 & n.4, 10; Kobalt Music SNPRM Initial Comments at 2; Reservoir Media Mgmt. SNPRM Initial Comments at 1; Sony Music Publ'g SNPRM Initial Comments at 1–2; Spirit Music Grp. SNPRM Initial Comments at 1; Concord Music Publ'g SNPRM Initial Comments at 2; Universal Music Publ'g Grp. SNPRM Reply Comments at 2.

transferred and that the default royalty entitlement provided for is subject to any such transfer.

4. The MLC's Distribution of Royalties Based on Its Records

As mentioned above, the final rule includes a new provision to address the MLC's royalty distributions based on the information in its records, as required by section 115(d)(3)(G)(i)(II). The new regulation has four main parts summarized here.

i. Default Royalty Distribution Practices Regarding Ownership and the MLC's Records

The first part of the regulation provides that, when making a distribution, the MLC shall treat the individual or entity identified in its records as of the date of the payee snapshot used for the applicable distribution as legally authorized to receive the distribution (*e.g.*, meaning that such party is the owner at the time of the use (or such owner's representative or designee) or a successor in interest to such owner's entitlement to the royalties (or such successor's representative or designee)). In other words, the MLC is to distribute royalties based on its records and to assume that whoever is in its records is legally entitled to the distribution, subject to the additional provisions below. By making royalty distributions to the owner reflected in the MLC's records on the date of the payee snapshot (*i.e.*, at the time of the payment), the MLC will be acting in accordance with widespread industry practice without contravening the statute. One commenter called it "an elegant solution."²¹⁷

This default distribution provision is both consistent with the language of the statute and responsive to the MLC's request for the "inclusion of a provision confirming that [it] can distribute royalties for a musical work to the current payee registered in its database."²¹⁸ The Office concludes that

the new provision is a reasonable and appropriate approach which facilitates the MLC's administration of royalty distributions. Moreover, this result was overwhelmingly supported by commenters. The comments made clear that the party identified in the MLC's records at the time of the payee snapshot (or its representative or designee) will be the party who is legally entitled to the distribution in the vast majority of cases.²¹⁹ Permitting the

for adopting that as a default rule."); NMPA SNPRM Initial Comments at 10 ("[A] 'default rule' should be the rule that applies in the vast majority of cases, and should not be the rule that applies only in exceptional cases.").

²¹⁹ See, *e.g.*, MLC SNPRM Initial Comments at 11 ("[I]n most industry agreements the current payee typically has the right to receive royalties for all periods (both prospective and historical). Thus, a default rule that provides for payments to be made to the current payee (a result that is consistent with most industry agreements) would produce more accurate results than a default rule that provides for payments to be made to a historical payee (a result that does not align with most industry agreements."); NMPA SNPRM Initial Comments at 4–5 ("[T]he custom and practice in the music industry is for royalties to be paid to the owner of the copyright at the time of payment rather than at the time of use, unless a different arrangement is agreed to between that copyright owner and a different payee, *e.g.*, the prior owner/assignor of the copyright. This custom and practice is memorialized in industry contracts and the royalty and administration systems of publishers, administrators, and CMOs are built around that custom and practice. In other words, the industry 'default rule' is the opposite of the 'default rule' proposed in the SNPRM."); Kobalt Music SNPRM Initial Comments at 2 ("The administrator who is registered at the time of a distribution is nearly always the entity that all royalties should be paid to, and this is how industry contracts and CMOs generally operate. Any exceptions to this practice would be the distinct minority."); Sony Music Publ'g SNPRM Initial Comments at 1–2 ("The Prior Owner Rule is inconsistent with the contracts around which the music publishing industry is built. . . . When music catalogues are bought and sold, the terms of the acquisition documents generally provide that the acquiring party has the right to collect all income after the date of sale."); Universal Music Publ'g Grp. SNPRM Reply Comments at 2 ("Under industry contracts, where rights are transferred or revert, the right to receive royalties (including those previously earned but not yet paid) generally follows the rights. . . . The Time of Use Rule will therefore . . . usually result in payment to the wrong party under the relevant contractual arrangements."); Warner Chappell Music SNPRM Reply Comments at 5 ("[A]ny rule that would establish the 'default payee' as anyone other than the current rightsholder at the time of the payment will, by definition, carry a real and inherent risk of compelling payment to someone not entitled to received it. . . . [T]he U.S. and international music publishing industry is universally built on maintaining current information for—and paying—the then-current owner or administrator."); Big Machine Music SNPRM Initial Comments at 2 ("I have never seen a copyright transfer that doesn't include a letter of direction to effectively set out the process for the new owner to receive all future income."); Reservoir Media Mgmt. SNPRM Initial Comments at 2 ("There is nothing to gain from some of these changes beyond a mirage of accuracy that is not in alignment with actual collection rights."); SONA SNPRM Reply Comments at 3 ("Songwriters,

MLC to act on the information in its records will lead to accurate payments without overburdening copyright owners and the MLC with new, potentially significant, data, reporting, and payment requirements, which could result in a delay in royalty distributions.²²⁰

publishers, and other third parties acquiring and/or licensing publishing rights in the music industry transfer rights, including the right to administer and collect royalty income, as of a specific date of transfer so that the party that is newly entitled to administer, collect and receive income in connection with the particular works will do so as of that specific effective date *regardless of when those monies were earned.*"). Other commenters also noted that this practice is not completely universal, and that there may be exceptions. See, *e.g.*, MLC SNPRM Initial Comments at 11; NMPA SNPRM Initial Comments at 4–5; Kobalt Music SNPRM Initial Comments at 2; Sony Music Publ'g SNPRM Initial Comments at 1–2; Universal Music Publ'g Grp. SNPRM Reply Comments at 2; Warner Chappell Music SNPRM Reply Comments at 6 ("In the rare instance where parties actually intend for someone other than the current owner or administrator to receive an MLC distribution, those parties are best positioned to so notify the MLC.").

²²⁰ The Office acknowledges that this default distribution provision could lead to the "wrong" result with respect to the narrow category of post-termination royalties paid for pre-termination uses. In such cases, the pre-termination copyright owner remains entitled to those royalties absent a contrary agreement because the reversion of the copyright by operation of law does not encompass the additional entitlement to those royalties. The Office nevertheless finds the default distribution provision to be reasonable in these cases in light of the reduced burden it places on the MLC, the various exceptions to the default distribution provision discussed below, as well as comments from publishers suggesting agreement with the end-result of having the MLC distribute post-termination royalties for pre-termination uses to the post-termination owner. See, *e.g.*, NMPA SNPRM Initial Comments at 6; CMPA SNPRM Initial Comments at 2 ("Although it may not be in the financial interest of the pre-termination owner, . . . it would be CMPA's recommendation that any and all adjustments of this nature be paid to the current copyright owner (that being the post-termination owner) at the time of the payment, and not at the time when the usage was made."); see also NMPA SNPRM Initial Comments at 5 ("[I]t is the custom and practice in the industry for the new owner or the songwriter to whom rights have been assigned or reverted to be paid all unpaid royalties regardless of when they were earned.").

Additionally, the comments suggested that at least some publishers do not wish to receive such royalties due to the administrative burdens involved in sharing those royalties with former songwriter partners. See, *e.g.*, NMPA SNPRM Initial Comments at 8; Kobalt Music SNPRM Initial Comments at 3 ("In our experience, former administrators in general are not set up to distribute royalties to their former songwriters, and almost no one—not even the former administrators themselves—wants them to continue to receive those royalties once all rights periods expire."); Big Machine Music SNPRM Initial Comments at 1–2 ("The collection and re-distribution of this income to the new owner creates an additional administrative burden for our company, taxes the human resources of my team and creates an unwanted liability for us without any benefit."); Me Gusta Music SNPRM Initial Comments at 2; Relative Music Grp. SNPRM Initial Comments at 1. By including these royalties within the MLC's default distribution provision, it allows publishers

²¹⁷ MAC & NSAI *Ex Parte* Letter at 1 (Feb. 12, 2024); see also MCNA et al. *Ex Parte* Letter at 1–2 (Mar. 15, 2024) (articulating qualified support for this solution in the termination context and subject to other various caveats, calling it "a reasonable and practical solution that accounts for both business considerations and the protection of creators' rights under the law in termination rights situations").

²¹⁸ MLC *Ex Parte* Letter at 3–4 (Feb. 5, 2024); see also MLC *Ex Parte* Letter at 1 (Feb. 21, 2024); MLC *Ex Parte* Letter at 1 (Mar. 22, 2024); Warner Chappell Music SNPRM Reply Comments at 5–6 ("[I]n light of the undisputed comments to the SNPRM detailing how and why the U.S. and international music publishing industry is universally built on maintaining current information for—and paying—the then-current owner or administrator, Warner Chappell advocates

However, the Office recognizes that there may be instances where the MLC's distribution of royalties to the owner at the time of the payment under the default distribution provision would result in an improper party being paid. Therefore, the Office has included clarifications and limitations. First, any distribution made by the MLC is not a determination of a party's legal entitlement to the royalties and does not prejudice any such party's legal claim. The purpose of the default distribution provision is to reduce burdens, gain efficiencies, and enhance accuracy by applying industry practice to the MLC's distributions. It does not alter anyone's underlying legal rights—especially if the MLC, in relying on this provision, ends up distributing royalties to an individual or entity who is not legally entitled to them. The MLC specifically supported the inclusion of such a provision.²²¹

Second, the default distribution provision does not apply where there is a dispute between parties or an investigation by the MLC covering the applicable works (or shares) or payees. The reference to an investigation is meant to include situations where the MLC may be looking into, for example, a potentially fraudulent registration or claim. The purpose is to make clear that where the MLC has knowledge that there is a cloud over the ownership of the relevant work (or share), it must continue holding royalties until that cloud has cleared.

Third, the default distribution provision does not apply if the MLC has been “notified otherwise.” This language is meant to cover circumstances where the MLC receives information that would indicate to a reasonable person that the payee identified in its records is not in fact entitled to the royalty distribution. In enacting the statutory requirement for the MLC to distribute royalties pursuant to its records, Congress did not intend for the MLC to knowingly make inaccurate payments after being expressly informed otherwise.²²² Whether particular information received is sufficient, or whether any such information is adequately substantiated,

for the MLC to actually be “notified” is a matter the Office leaves to the MLC's reasonable discretion based on its experience, practices, and policies, subject to the Office's guidance.²²³

ii. The Default Distribution Provision Does Not Change the MLC's Duty To Verify the Accuracy of Royalty Distributions

The next part of the provision states that despite the default distribution provision, the MLC must continue to engage in reasonable efforts to verify the information provided to it and to combat against fraudulent registrations and claims. This provision is not intended to require the MLC to engage in additional efforts beyond those it currently undertakes, but rather to ensure that it continues to engage in such efforts after the rule is enacted.²²⁴ An examination of the MLC's current such efforts and their sufficiency is beyond the scope of this proceeding.

iii. The MLC Must Still Correct Its Own Errors

The final part of the provision is meant to codify and clarify a point made in the SNPRM that “[w]here the MLC distributes royalties to the wrong payee due to an error on the MLC's part . . . , the MLC must correct its error in a timely fashion.”²²⁵ The regulation makes clear that the applicable type of error is one caused by the MLC's actions, as opposed to where the MLC acts in accordance with the default distribution provision or otherwise reasonably relies on information provided to it by others that turns out to be inaccurate.²²⁶ The reference to the MLC's actions encompasses the actions of its employees, but the Office also

intends for it to cover actions of others acting on its behalf.

C. Matched Historical Royalties

Outside the context of the owner at the time of the use versus the owner at the time of the payment issue, the Office received few comments regarding our proposal that the MLC report and distribute matched historical royalties in the same manner and subject to the same requirements that apply to the reporting and distribution of blanket license royalties.²²⁷ Notably, the MLC supported this proposal by including it in its own regulatory proposal and no commenters appear to have objected.²²⁸ The Office is, therefore, adopting this portion of the SNPRM as final for the reasons stated in the SNPRM.²²⁹

D. Ownership Transfers and Royalty Payee Changes

The final rule retains the overall framework and structure from the SNPRM with respect to the provisions governing notice to and implementation by the MLC of ownership transfers and other royalty payee changes.²³⁰ The Office, however, has made several changes from the SNPRM.

1. Notice of a Change to the MLC

The SNPRM contained detailed and tailored notice requirements based on the type of payee change at issue. It proposed such requirements for the following circumstances: (1) transfers of copyright ownership other than by will or operation of law; (2) transfers of copyright ownership by statutory termination; (3) other transfers of copyright ownership; and (4) designations of alternative royalty payees.²³¹

In response to the SNPRM, several commenters criticized the non-termination-related notice requirements, including on the ground that the Office does not need to regulate standard operational processes, like those concerning contractual transfers and letters of direction, for which the MLC has well-functioning systems in place.²³² Commenters also contended

²²³ While the MLC suggested that such notifications will always take the form of disputes, the Office cautions that this might not always be the case. See MLC *Ex Parte* Letter at 1–2 (Mar. 22, 2024). That is why the final rule provides separate explicit provisions for both disputes and where the MLC is notified otherwise. The notification provision is meant to be broader to encompass other possible scenarios outside of a formal dispute. While the degree of overlap between the two provisions may be substantial, it is not necessarily total.

²²⁴ See MLC *Ex Parte* Letter at 5 (Feb. 21, 2024) (explaining that the MLC “has substantial review processes in place to prevent fraudulent or improper claiming and diversion of royalties”); see also U.S. Copyright Office, *Unclaimed Royalties: Best Practice Recommendations for the Mechanical Licensing Collective* iii, 60 (2021), <https://copyright.gov/policy/unclaimed-royalties/unclaimed-royalties-final-report.pdf> (“[T]he MLC should have mechanisms in place to help review, verify, and quality-check information, and recognize problems like conflicts, inconsistencies, inaccuracies, and potential fraud.”).

²²⁵ 88 FR 65908, 65918 n.137.

²²⁶ See MLC *Ex Parte* Letter at 2 (Mar. 22, 2024).

²²⁷ See 88 FR 65908, 65914.

²²⁸ See MLC SNPRM Reply Comments, App. A. at iii–iv.

²²⁹ 88 FR 65908, 65914.

²³⁰ See *id.*

²³¹ *Id.* at 65914–17.

²³² See e.g., Kobalt Music SNPRM Initial Comments at 3; Spirit Music Grp. SNPRM Initial Comments at 2; Reservoir Media Mgmt. SNPRM Initial Comments at 2; ClearBox Rights SNPRM Reply Comments at 10.

to choose for themselves how they would like to handle these situations. They can do nothing, and the royalties will be distributed to the post-termination owner. Or, if they wish to assert their entitlement to the royalties, they can defeat the default distribution provision and obtain them by simply notifying the MLC, as discussed below.

²²¹ MLC *Ex Parte* Letter at 2 (Feb. 21, 2024).

²²² See H.R. Rep. No. 115–651, at 9 (referring to “the efficient and accurate collection and distribution of royalties” as the MLC's “highest responsibility”); S. Rep. No. 115–339, at 9 (same); Conf. Rep. at 7 (same).

that the SNPRM's requirements were unworkable or unduly burdensome.²³³

The MLC echoed these comments and submitted a regulatory proposal that largely retained the Office's proposed requirements for termination-related transfers, but replaced the other notice requirements with a catch-all provision providing that such notice be made in accordance with requirements established by the MLC.²³⁴ Few commenters supported the Office's proposal with respect to non-termination-related notices.²³⁵

Based on these comments, the Office has scaled back the notice requirements, generally in line with the MLC's proposal. Outside of the termination context, it does not appear that regulation is currently necessary. Instead, the Office is issuing a rule directing the MLC to adopt a written policy reflecting its practices and requirements for non-termination-related notices. The Office will monitor this area and will consider potentially adopting regulations in the future if presented with a record reflecting a need to intervene.

i. Non-Termination-Related Transfers of Copyright Ownership and Royalty Payee Changes

As discussed above, the final rule omits the previously proposed requirements for non-termination-related notices and replaces them with a directive for the MLC to adopt and publish requirements for such notices. More specifically, the final rule provides that parties seeking to make payee changes outside the context of a termination must notify the MLC pursuant to such reasonable requirements as it establishes and makes publicly available on its website. To the extent the MLC does not already have such a policy on its website as of the date this final rule is published in the **Federal Register**, the MLC will have 60 days to adopt one and make it public, unless the Office permits an extension.

²³³ See e.g., NMPA SNPRM Initial Comments at 4, 14–15; Spirit Music Grp. SNPRM Initial Comments at 2; Farris, Self & Moore, LLC SNPRM Initial Comments at 1; Warner Chappell Music SNPRM Reply Comments at 7–8; Universal Music Publ'g Grp. SNPRM Reply Comments at 2 n.1; Reservoir Media Mgmt. SNPRM Initial Comments at 2.

²³⁴ MLC SNPRM Reply Comments at 3–5, App. A at iv–xii; MLC SNPRM Initial Comments at 18–20; MLC *Ex Parte* Letter at 2 (Mar. 22, 2024) (explaining “the need for flexibility to incorporate evolving industry practices into processes to effectuate the various types of transfers and payee changes that occur in the normal course of business for rightsholders”).

²³⁵ See, e.g., Promopub SNPRM Initial Comments at 5.

Additionally, there is one aspect of the SNPRM regarding non-termination-related notices that the final rule retains. In response to the NPRM, the Songwriters Guild of America et al. (“SGA et al.”) proposed specific requirements to apply where the MLC is asked by the terminating party to implement an agreement directing it to pay post-termination royalties to the pre-termination copyright owner.²³⁶ SGA et al. was concerned about contractual overreach by publishers requiring the execution of anticipatory letters of direction as part of publishing deals.²³⁷ The Office included the proposal as part of the SNPRM, explaining that “[b]ased on the current record, the proposal seems to be a reasonable safeguard, even if there is no such overreach at present.”²³⁸ No commenter specifically opposed this proposal, and the MLC included it in its regulatory proposal.²³⁹ The Office has, thus, retained most of the proposal in the final rule with some minor conforming edits.²⁴⁰

ii. Transfers of Copyright Ownership by Statutory Termination

In contrast to the Office's proposal on non-termination-related notices, commenters generally did not oppose the Office's proposal on notices to the MLC about payee changes resulting from statutory terminations. Indeed, multiple commenters affirmatively supported it.²⁴¹ For example, MAC et al. said that they “fully support the Office's proposal,” calling it “simple, practical

²³⁶ 88 FR 65908, 65917.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ MLC SNPRM Reply Comments, App. A. at vi–vii.

²⁴⁰ The final rule does not include the requirement that such a notice must include “a clear statement stipulating that neither the notice nor the distribution of royalties by the mechanical licensing collective in accordance with the notice prejudices the rights of either party” as such a requirement would be unnecessary, considering that the regulations also require the notice to be signed after the effective date of termination.

²⁴¹ See, e.g., MLC SNPRM Initial Comments at 20; MLC SNPRM Reply Comments at 3; MAC et al. SNPRM Initial Comments at 2–3; Promopub SNPRM Initial Comments at 5. Despite its general support, Promopub also expressed concern that “[i]f the terminating party has already been subjected to a dispute process at the MLC, the pre-termination copyright owner/prior payee should not have another opportunity to add salt to the wound by way of the proposed Rule creating another notification and dispute cycle.” Promopub SNPRM Initial Comments at 5. To clarify, these notice requirements and the dispute mechanism contained within them are only effective prospectively. This means that if a terminating party previously notified the MLC about an effective termination and the MLC acknowledged the sufficiency of that notice, then nothing in the final rule would require the terminating party to submit a new notice to the MLC.

and efficient.”²⁴² The MLC “welcome[d] regulatory clarity from the Office” on this topic²⁴³ and said that “[m]uch of the provisions concerning termination procedure are consistent with MLC practice, or could be implemented.”²⁴⁴ The MLC and other commenters, however, proposed modifications to the Office's proposal to address discrete concerns.

Based on the comments and the discussion in the SNPRM, the Office is adopting as final the proposed notice requirements regarding payee changes resulting from statutory terminations with the modifications discussed below.

a. Whether the Notice Requirements Should Be a Floor

The Office disagrees with the MLC's proposal to turn the notice requirements into a floor.²⁴⁵ While the Office acknowledged in the SNPRM that the proposed information that must be submitted to the MLC might not provide sufficient information to process and implement the ownership change in some cases, the Office also proposed a means by which the MLC could obtain the minimum necessary information to implement the change.²⁴⁶ In doing so, the Office explained that “[t]his may be a better approach than requiring terminating parties to provide additional information to the MLC at the outset that they may not readily have and which may not be needed to implement the change.”²⁴⁷

The Office continues to believe that this is the most appropriate approach. Turning the requirements into a floor would allow the MLC to request additional and potentially unnecessary information that may be challenging to produce up front, which was precisely the concern that led to the Office's proposal.²⁴⁸ As further discussed below, if the initial submission to the MLC lacks what it needs, the MLC can request additional information at that point.

b. Treatment of Notices Containing Multiple Works

The Office agrees with Linda Edell Howard that the rule should be clarified to recognize that a single notice—whether a change notice to the MLC or a statutory notice of termination submitted to the Office for recordation—may identify more than one musical

²⁴² MAC et al. SNPRM Initial Comments at 2–3.

²⁴³ MLC SNPRM Reply Comments at 3.

²⁴⁴ MLC SNPRM Initial Comments at 20.

²⁴⁵ See MLC SNPRM Reply Comments, App. A at v.

²⁴⁶ 88 FR 65908, 65915–16.

²⁴⁷ *Id.* at 65916.

²⁴⁸ *Id.* at 65915–16.

work, and that the relevant statuses of those works may be different.²⁴⁹ The final rule makes clear that, in such cases, any implication as to one work does not affect another listed in the same notice. Each work must be treated independently. This is clarified throughout the final rule, including in the notice, implementation, and dispute provisions.

For example, if there is a dispute as to one work, but not another in the same change notice submitted to the MLC, the MLC must still implement and give effect to the change with respect to the work that is not in dispute (assuming that there are no other issues). The same is true where the MLC has sufficient information to implement the change as to one work, but not for another from the same notice. As another example, if a notice of termination identifying multiple musical works is timely recorded in the Office as to some works but not others, assuming that there are no other issues, the MLC should implement the termination of those as to which the notice is timely recorded, even though the works with untimely recorded notices cannot be terminated.

c. Requirement To Provide the Statutory Notice of Termination

Linda Edell Howard asserted that it can sometimes be difficult or expensive to obtain a copy of the notice of termination submitted to the Office for recordation.²⁵⁰ She did not, however, make any alternative suggestions. The Office continues to believe that providing a copy of the actual notice of termination is reasonable and not unduly burdensome.

d. Requirement To Provide Proof of Recordation or Proof of Submission to the Office for Recordation

The Office agrees with the MLC's proposal to clarify that the proof of submission of the statutory notice of termination to the Office must reflect that it was submitted before the effective date of termination.²⁵¹ For a notice of termination to be timely recorded, it must be received by the Office before the effective date.²⁵²

The Office disagrees with ClearBox Rights that the proof of recordation requirement should be dropped because it is "cumbersome and potentially not necessary."²⁵³ ClearBox Rights made

three arguments to support its position. First, it contended that it "would prove to be an administrative burden on the MLC to maintain a schedule of such notices to be delivered."²⁵⁴ This argument is unpersuasive given that the MLC did not object to this requirement and included it in its regulatory proposal.²⁵⁵ Moreover, the rule does not require the MLC to maintain any such schedule.

Second, ClearBox Rights asserted that "there may be instances where the Copyright Office has not yet recorded such documents for various reasons, including that perhaps one copyright out of many on the notice is under review or possibly not valid."²⁵⁶ It argued that the "lack of recordation or delay of recordation of one document with many copyrights because one or more copyrights is in question for further review should not negatively impact the other copyrights on that document."²⁵⁷ The Office does not believe that these concerns are grounds for eliminating the proof of recordation requirement. While the Office agrees, as discussed above, that the rule should accommodate notices identifying multiple works and that each work should be handled individually, timely recordation is still required by the statute "as a condition to [the termination] taking effect."²⁵⁸ Thus, the MLC should not implement a change as to a particular work until proof of recordation of the relevant notice of termination for that work is delivered.

Third, ClearBox Rights noted that "recordation of the termination at the Office may never happen."²⁵⁹ It said that it has "seen instances where a notice of termination was filed, and the pre-termination owner acknowledges the termination to be effective even though there was an issue in the notice filing or recordation."²⁶⁰ ClearBox Rights explained that "[s]ometimes the pre-termination owner will simply overlook the technical issues of the termination process and grant the rights back to the post-termination party."²⁶¹ Linda Edell Howard made similar statements, noting that sometimes the pre-termination copyright owner

"waives the recordation requirement."²⁶²

The Office does not believe that these possible problems provide any basis to not require proof of recordation. As noted above, timely recordation is a statutory condition for the termination to be effective.²⁶³ If the termination is not effective, no rights change hands pursuant to section 203 or 304. To the extent the pre-termination copyright owner nevertheless acquiesces to the attempted termination, that may simply result in an ordinary transfer of copyright ownership from the pre-termination copyright owner to the terminating party. As such, it would be subject to the requirements for notifying the MLC about a non-termination-related change, rather than a termination-related change.

Based on the foregoing discussion, however, the Office concludes that the final rule should clarify that a termination-related payee change notice submitted to the MLC can be withdrawn or converted into a non-termination-related payee change notice pursuant to such reasonable requirements as the MLC establishes and makes publicly available on its website. The scenarios raised by the commenters demonstrate a need for flexibility.

Regarding Ms. Howard's question about what proof will qualify if notices of termination are recorded with the Office though electronic means,²⁶⁴ the Office reiterates that "[a]dequate proof of timely recordation could be demonstrated by either providing the MLC with a copy of the certificate of recordation or the record as reflected in the Office's online public catalog," and that "[a]dequate proof of submission to the Office for recordation could take the form of courier tracking or a delivery confirmation, a return receipt from the Office, or some other communication from the Office confirming receipt."²⁶⁵ The eventual ability to submit notices of termination through the Office's online Recordation System will not impair the availability of adequate proof. For example, while courier tracking or delivery confirmation would not be available, the remitter would instead have such proof in the form of an electronic communication from the Office confirming receipt.

e. Requirement To Identify the Relevant Works

The Office declines the MLC's proposal to add a requirement to

²⁴⁹ See Howard SNPRM Initial Comments at 4, 6, 8.

²⁵⁰ *Id.* at 4.

²⁵¹ See MLC SNPRM Reply Comments, App. A at v.

²⁵² See 37 CFR 201.10(f)(1)(ii)(A), (f)(3).

²⁵³ See ClearBox Rights SNPRM Reply Comments at 9–10.

²⁵⁴ *Id.* at 9.

²⁵⁵ See MLC SNPRM Reply Comments, App. A at v.

²⁵⁶ ClearBox Rights SNPRM Reply Comments at 10.

²⁵⁷ *Id.*

²⁵⁸ See 17 U.S.C. 203(a)(4)(A), 304(c)(4)(A).

²⁵⁹ ClearBox Rights SNPRM Reply Comments at 10.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² Howard SNPRM Initial Comments at 4.

²⁶³ 17 U.S.C. 203(a)(4)(A), 304(c)(4)(A).

²⁶⁴ Howard SNPRM Initial Comments at 4.

²⁶⁵ 88 FR 65908, 65915.

provide “[a] satisfactory identification of all musical works subject to the notice of termination identified by appropriate unique identifiers.”²⁶⁶ The MLC said that this is needed because it “cannot implement a change in ownership of musical works without knowing *which* musical works are subject to the change in ownership.”²⁶⁷ As the Office previously explained in the SNPRM, the regulations governing the content of statutory notices of termination (which must be submitted to the MLC as part of the change notice) already provide for an identification of each work.²⁶⁸ While the Office acknowledged in the SNPRM that such identification might not provide the MLC with sufficient information to process and implement the ownership change in some cases, the Office also proposed a means, further discussed below, by which the MLC could obtain the minimum necessary information.²⁶⁹ The Office agrees with other commenters “that the default position should be to make it as easy as possible for a terminating songwriter to comply with processes to effect their right.”²⁷⁰ Thus, we decline to include a requirement that unique identifiers for all musical works must be provided up front. As further discussed below, if the MLC ultimately needs them for certain works, it can request them after attempting to implement the change based on the information in the notice.

f. The MLC’s Duty To Request Additional Necessary Information

In the SNPRM, the Office proposed that where a compliant termination-related change notice does not provide the MLC with sufficient information to process and implement the ownership change, the MLC should engage in best efforts to identify the minimum necessary information, including through correspondence with both the terminating party and pre-termination copyright owner (or their respective representatives).²⁷¹ The MLC expressed concern with this proposal, stating that it is “not clear if this reference to ‘best efforts’ is meant to imply a responsibility to make findings as to what works are subject to termination.”²⁷² The MLC said that the requirement to correspond with the relevant parties “is a reasonable step”

and that it “does not object to making reasonable efforts to reach out to parties where paperwork is incomplete.”²⁷³ It said, however, that it “cannot itself identify the ‘relevant musical works,’ make decisions itself about what is contained in private contracts that may be subject to termination, or determine what works are, or are not, subject to termination in any particular disputed case.”²⁷⁴

The Office is clarifying this portion of the rule in light of the MLC’s comments. To eliminate any confusion, the “best efforts” language has been eliminated in the final rule, while the requirement to correspond has been retained. In doing so, the Office emphasizes that the final rule’s reference to information that is “insufficient to enable the [MLC] to implement and give effect to the termination” is meant to be interpreted narrowly. In some cases, submitted information can be sufficient to enable the MLC to act, even if it must undertake certain reasonable efforts. For example, even if the identification of the works in the notice of termination does not appear sufficient on its face, perhaps lacking unique identifiers, the information is nevertheless considered sufficient if the MLC can act on the information after undertaking reasonable efforts to attempt to match the works identified in the notice of termination with the corresponding works in its records. The Office is not mandating that the MLC engage in exhaustive efforts or do this in all cases, but in the termination context, it should provide assistance within reason.

Additionally, Promopub noted that there is no time limit on the MLC in this provision and said that “delay should be assiduously avoided.”²⁷⁵ It proposed that “the MLC give notice of receipt of an appropriately documented claim within 15 calendar days of receipt” and that, “[i]f more information is required to process the claim, that explanatory notice should be given within 30 calendar days of receipt.”²⁷⁶ It also wanted the MLC to establish a “hot line” and dedicated web pages that terminating parties can access for assistance.²⁷⁷ The Office agrees that the MLC should have dedicated web pages and other member support for terminating parties, and strongly encourages it to provide such support as soon as reasonably possible. The final rule adds the word “promptly” to signal that the MLC should move

expeditiously, since, as discussed above, the Office expects the MLC to undertake some reasonable efforts in addition to correspondence. Should the Office become aware of widespread unreasonable delays, we can reconsider a specific timing requirement at a later date.

Lastly, the Office understands that this approach may lead to longer lead times before the MLC ends up implementing a change than if additional information were required to be submitted at the outset. As discussed above and in the SNPRM,²⁷⁸ the Office continues to believe that this is the better approach. However, we wish to encourage terminating parties to voluntarily provide additional useful information to the MLC, such as unique identifiers, as part of their initial notice submission if it is possible to do so. To that end, in amending its form for submitting termination-related payee change notices based on the final rule, the MLC could include fields for additional information it believes would be helpful in implementing the change, provided that the form clearly identifies those non-required fields as being optional.

g. The Meaning of “Terminating Party”

The final rule clarifies the definition of “terminating party.” Throughout the rule, this term is used to refer to parties entitled to royalties from the MLC based on an effective termination and who may notify the MLC of such entitlement. This term is not defined by reference to who sang and served the statutory notice of termination.

The SNPRM defined the term as “the new musical work copyright owner.”²⁷⁹ That language did not, however, account for the fact that the termination may not yet be effective at the time the payee change notice is submitted to the MLC, meaning that the relevant party is not the new owner at that point in time. The SNPRM’s definition also did not clearly provide that a successor in interest to a terminating author or heir (e.g., their new publisher or administrator) can also be a “terminating party” within the meaning of the rule. Including successors in interest is necessary because there may be times where the termination becomes effective and reverted rights are re-granted before the MLC is notified. The final rule makes these clarifications.

The Office disagrees with Linda Edell Howard that the term “terminating party” “should include only those who signed the notice of termination, not

²⁶⁶ MLC SNPRM Reply Comments, App. A at v.

²⁶⁷ *Id.* at 3.

²⁶⁸ 88 FR 65908, 65915 & n.112 (citing 37 CFR 201.10(b)(1)(iii), (b)(2)(iv)).

²⁶⁹ *Id.* at 65915–16.

²⁷⁰ MAC & NSAI *Ex Parte* Letter at 1 (Feb. 12, 2024).

²⁷¹ 88 FR 65908, 65915–16.

²⁷² MLC SNPRM Initial Comments at 20.

²⁷³ *Id.* at 20–21.

²⁷⁴ *Id.* at 21.

²⁷⁵ Promopub SNPRM Initial Comments at 5–6.

²⁷⁶ *Id.* at 6.

²⁷⁷ *Id.*

²⁷⁸ 88 FR 65908, 65915–16.

²⁷⁹ *Id.* at 65924.

those non-signatory heirs or authors,” because “[t]he non-signatory statutory heirs or authors are represented by those who signed and served the notice of termination.”²⁸⁰ As noted above, this misunderstands the way the term “terminating party” is used throughout the rule.

The Office also disagrees that “[i]nformation concerning non-signatories should not be required to implement a change in copyright ownership and payee status, or reduce the percentage to be paid out.”²⁸¹ Each terminating party must be treated independently, just like any other copyright owner when there is more than one. That is why the MLC is only required to implement a change as to those terminating parties whose information is provided in the notice of change. That being said, to the extent a particular terminating party is in fact represented by another terminating party, as Ms. Howard suggested, or by someone else, then the information provided to the MLC would be for that representative.²⁸²

h. Verification Obligations

In the SNPRM, the Office proposed that where the MLC has good reason to doubt the authenticity of the information submitted, such as the statutory notice of termination or proof of recordation, it should seek verification from the Office.²⁸³ The MLC proposed instead to require the submitter to seek verification from the Office and deliver documentation of such verification to the MLC.²⁸⁴ The MLC asserted that “it would be inappropriate to shift to The MLC the role of monitoring and obtaining ownership documentation,” and that “[m]embers must remain primarily responsible for the completeness and accuracy of their works registrations and claims, and it would be inefficient to shift this task to The MLC.”²⁸⁵

The Office agrees with the MLC’s position. While we have endeavored to minimize the burden on a terminating party to have their termination implemented by the MLC, on reflection, it is more appropriate for the submitter to obtain whatever verification may be necessary. Therefore, the final rule provides that where authenticity is in doubt, the MLC shall either seek verification from the Office or request that the submitter provide such verification.

i. Dispute-Related Issues

In the SNPRM, the Office proposed that where the MLC receives a payee change notice from the terminating party, it must inform the pre-termination copyright owner within 15 days of receiving either the notice or the last piece of information necessary to implement the change, whichever is later.²⁸⁶ After being so notified, a pre-termination copyright owner who disputes the termination would have 30 days to initiate its dispute with the MLC before the MLC must implement the change.²⁸⁷ The Office agrees with Linda Edell Howard that the terminating party should be contemporaneously alerted when the MLC informs the pre-termination copyright owner.²⁸⁸ This way, the terminating party will know when the 30-day dispute period commences. We disagree, however, with Ms. Howard’s proposal to shorten the 30-day period to 15 days.²⁸⁹ While the pre-termination copyright owner should already be on notice about the termination generally, the Office believes that 30 days is a reasonable amount of time after being notified that a change is being sought *at the MLC*, in case they wish to initiate a dispute, which requires providing specific documentation to the MLC that may take time to assemble.

2. Implementation of a Change by the MLC

The SNPRM proposed various requirements to govern how the MLC implements and gives effect to a payee change, both in termination and non-termination contexts.²⁹⁰ Commenters generally did not oppose these requirements, though some raised discrete questions.²⁹¹ The MLC generally supported the proposed requirements, including those for non-

termination-related changes.²⁹² Based on the comments and the discussion in the SNPRM, the Office is adopting the proposed implementation requirements as final with the modifications discussed below.

i. Prospective Versus Retroactive Implementation

In the SNPRM, the Office proposed that, where a relevant change is effective prior to the MLC’s implementation, the MLC should be permitted, but not required, to implement it going back to its effective date, if requested in the notice to the MLC.²⁹³ In response, MAC et al. said that “the MLC can and should implement payee changes going back to the date of the change, regardless of when implemented,” and disagreed that it is too burdensome for the MLC to do so.²⁹⁴ Linda Edell Howard raised concerns about lag times in notifying the MLC in the termination context.²⁹⁵ The MLC “welcome[d]” the Office’s proposal.²⁹⁶

The Office is not persuaded to alter the rule. In the SNPRM, the Office considered similar comments and weighed them against the MLC’s concerns about such a requirement being overly burdensome.²⁹⁷ We were “inclined to agree with the MLC that retroactive implementation may be too administratively burdensome to require for every payee change,” and noted that our regulations require only prospective implementation by the MLC in processing DMP voluntary licenses.²⁹⁸ The Office also “welcome[d] further comments on this issue,” including on “what is standard in the industry.”²⁹⁹ The minimal comments received in response to the SNPRM do not meaningfully grow the record in a way that persuades the Office to impose this requirement on the MLC at this time.

ii. Timing

In its regulatory proposal, the MLC proposed to soften the implementation deadlines the Office proposed, by replacing requirements to implement a change within a specified period of time with language requiring only “reasonable efforts to” do so.³⁰⁰ While the MLC’s comments do not explain why they requested this change,

²⁸⁰ See Howard SNPRM Initial Comments at 6.

²⁸¹ See *id.*

²⁸² The Office further declines Ms. Howard’s proposal to make the identification of the terminating party plural throughout the rule because “[r]arely is the terminating party one individual.” Howard SNPRM Initial Comments at 4. There are already specific provisions in the rule speaking to the case of multiple terminating parties (e.g., 37 CFR 210.30(c)(2)(v)), which means that the rest of the rule contemplates the possibility of there being more than one. Moreover, “[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise,” “words importing the singular include and apply to several persons, parties, or things.” 1 U.S.C. 1.

²⁸³ 88 FR 65908, 65915.

²⁸⁴ MLC SNPRM Reply Comments at 3–4, App. A at v.

²⁸⁵ *Id.* at 4.

²⁸⁶ 88 FR 65908, 65916.

²⁸⁷ *Id.*

²⁸⁸ See Howard SNPRM Initial Comments at 5.

²⁸⁹ See *id.*

²⁹⁰ 88 FR 65908, 65917–18.

²⁹¹ See, e.g., MAC et al. SNPRM Initial Comments at 3; Howard SNPRM Initial Comments at 8–9.

²⁹² MLC SNPRM Reply Comments at 5, App. A at vii–ix, xi–xii; MLC SNPRM Initial Comments at 18 n.25.

²⁹³ 88 FR 65908, 65918.

²⁹⁴ MAC et al. SNPRM Initial Comments at 3.

²⁹⁵ Howard SNPRM Initial Comments at 9.

²⁹⁶ MLC SNPRM Reply Comments at 5.

²⁹⁷ 88 FR 65908, 65918.

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ MLC SNPRM Reply Comments, App. A at vii.

presumably it is to avoid technical violations of the regulations, such as due to circumstances beyond its control or where it inadvertently makes a mistake without realizing it (e.g., where an employee accidentally fails to enter the change into the system).³⁰¹

The Office declines to adopt the MLC's proposal, but has modified the final rule to address this issue. The provision's purpose is to set expectations for how the MLC will act, and that entails meaningful deadlines that parties to a payee change can rely on in conducting their business. The Office has imposed deadlines on the MLC's actions in other contexts and sees no reason not to do so here. We are not opposed, however, to providing the MLC with some leeway if an implementation deadline is accidentally missed.

Under the final rule, in such a situation, the MLC must implement the change as soon as reasonably practicable, but no later than the next regular monthly royalty distribution that occurs either: (1) after the original implementation deadline; or (2) at least 30 days after the date that the MLC learns that the change was not implemented on time—whichever is later. The Office believes that this solution gives the MLC reasonable flexibility without being so open-ended that the parties to a change have no idea when their change will be implemented.

Importantly, the rule further provides that if the MLC is late in implementing the change, it must do so retroactively to the date of the original implementation deadline. The rule does not provide a separate deadline for making any corrective royalty adjustment. Rather, the Office expects the MLC to make any such adjustments in accordance with its regular practices. Regardless of any associated burdens, we believe this is a fair burden to place on the MLC when it fails to meet the rule's deadlines, even if that failure is accidental.

iii. Additional Provisions for Termination-Related Changes

In the SNPRM, the Office proposed that where a compliant notice is accompanied by proof that the statutory notice of termination was submitted to the Office for recordation, but not proof

that it was timely recorded, the MLC should hold applicable royalties pending receipt of proof of timely recordation.³⁰² After the MLC receives proof of timely recordation, it would need to implement the change, which would include distributing the held funds to the terminating party.³⁰³ If, on the other hand, the Office refuses to record the notice or it is recorded on or after the effective date of termination, the MLC would need to release the funds to the pre-termination copyright owner.³⁰⁴ The Office further proposed that if proof of timely recordation is not received within 6 months, the MLC should contact the Office to confirm the status of the relevant recordation submission.³⁰⁵

No commenter objected to this proposal, but the MLC took exception to the part requiring it to contact the Office to confirm the status of the recordation submission.³⁰⁶ For the same reasons discussed above in Part III.D.1.ii.h., it proposed instead that the submitter be required to check the status with the Office and provide the MLC with documentation of the confirmed status.³⁰⁷ The MLC proposed that if the submission still remains pending, the submitter should provide monthly updates to the MLC.³⁰⁸ It further proposed that if the submitter fails to provide a monthly status confirmation, the MLC must then act in accordance with the other implementation provisions.³⁰⁹

On reflection, as with the provision discussed above in Part III.D.1.ii.h., the Office agrees with the MLC's general position that the obligation to confirm the status of the submission is more appropriately placed on the submitter. The Office, however, disagrees with the MLC's specific proposal. It would be unnecessary and overly burdensome for the terminating party to be required to contact the Office and provide the MLC with monthly updates. Instead, the final rule provides that the MLC may request periodic updates at its discretion.

Additionally, the Office disagrees that if the terminating party fails to provide an update, the MLC should simply act in accordance with the rest of the implementation regulations. That would result in the funds being released to the pre-termination copyright owner. The Office does not believe the MLC should

release the funds while the recordation status remains pending. Instead, the final rule provides that the MLC must hold the funds until it is informed of the notice of termination's final recordation status and then act accordingly. The rule purposefully does not specify who must provide that final status to the MLC. Where the result is a timely recordation, the terminating party will be incentivized to provide confirmation of the final status, but in other situations (e.g., where recordation is refused), the pre-termination copyright owner would be incentivized to provide it so that the royalties do not remain on hold. Additionally, nothing prevents the MLC from contacting the Office directly, if it chooses to.

Though not raised by commenters, the final rule also clarifies that the royalty hold should be lifted where the recordation submission to the Office is withdrawn by the remitter. There is no reason to hold royalties pending recordation where the recordation submission has been resolved. The omission of that scenario from the SNPRM was an unintentional oversight.

E. Disputes

1. Process and Documentation for Termination-Related Disputes

The Office received few comments on our proposal for the handling of termination-related disputes. The MLC generally supported this aspect of the SNPRM.³¹⁰ Another commenter, Linda Edell Howard took issue with the idea that the MLC could substantiate a dispute claim without hearing from the terminating party, and raised concerns about the power imbalance between the pre-termination copyright owner and terminating party in this context.³¹¹ While the Office appreciates these concerns, we decline to address these broader issues in the current proceeding for the reasons discussed in Part III.E.2. below. Moreover, some of Ms. Howard's concerns are connected to a subject of inquiry in a separate, open proceeding reviewing the MLC's statutory designation.³¹²

Based on the comments and the discussion in the SNPRM, the Office is adopting the proposed requirements

³¹⁰ *Id.* at 5, App. A at ix–x.

³¹¹ Howard SNPRM Initial Comments at 5–6 & n.3, 8 (discussing, among other things, how there is a one-sided ability to hold up royalties in a dispute to give the pre-termination copyright owner leverage over the terminating party).

³¹² See 89 FR 5940, 5943 (Jan. 30, 2024) (requesting “information regarding: (1) any steps that the [MLC] is taking to protect against the incidence of fraudulent ownership claims and frivolous ownership disputes; and (2) whether these steps have been successful”).

³⁰¹ If the MLC wanted more time for all implementations, the Office believes it would have made that request more specifically. Notably, the SNPRM proposed to give the MLC at least 30 days to implement all changes, which was in line with an earlier request from the MLC. See MLC NPRM Initial Comments at 10–11. The proposal was also in line with the Office's rules governing the MLC's processing of DMP voluntary licenses. See 37 CFR 210.24(f).

³⁰² 88 FR 65908, 65917–18.

³⁰³ *Id.* at 65918.

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ MLC SNPRM Reply Comments at 3–4, App. A. at viii–ix.

³⁰⁷ *Id.*

³⁰⁸ *Id.* at App. A at viii–ix.

³⁰⁹ *Id.*

pertaining to termination-related disputes as final. In doing so, and as discussed above in Part III.A.3., we have added language to clarify the operation of the provision in the context of disputes concerning the application of the Exception to voluntary licenses.

In adopting the final rule, the Office requests that the MLC's dispute resolution committee, which the MMA tasks with establishing the MLC's dispute policies, promptly establish a new policy for termination-related disputes that adheres to the requirements adopted in this final rule. The final rule sets certain key requirements based on the issues raised by commenters, but it is not a substitute for a comprehensive dispute policy.

2. Dispute Resolution

The Office has decided to omit the proposed provisions about how disputes should be resolved from the final rule.³¹³ Instead, unless and until the Office regulates in this area, disputes are to be resolved pursuant to the MLC's dispute policies. No one specifically supported the SNPRM proposal, and some commenters raised concerns with it.³¹⁴ Other commenters raised other concerns and sought various regulations to address them. For example, North Music Group asked for the MLC to "be prohibited from creating disputes on its own motion," or for there to at least be "some process and constraints applicable to its actions."³¹⁵ The record on these issues, however, is thin.

We do not take these dispute-related concerns lightly, but given the record of the proceeding, we decline to take up these issues at this time. The Office may, however, consider addressing them in a future proceeding where they can be more fully explored to determine whether any regulatory action may be needed. In the meantime, the Office requests that the MLC's dispute resolution committee consider the concerns raised by commenters, as well as the SNPRM's proposal to require ongoing active dispute resolution. In doing so, the Office asks the committee to: (1) examine whether such issues are arising in connection with disputes initiated with the MLC; (2) evaluate how these issues are addressed elsewhere in

the industry; and (3) determine whether the MLC's dispute policies should be amended to address any of them.

3. Disclosure and Confidentiality

In responding to the NPRM, the MLC asked for guidance about whether it "should be required to disclose information about the royalties being held to the parties involved" and stated that it "typically does not disclose the amount of royalties on hold to the parties in a dispute pending agreement or resolution of a dispute."³¹⁶ ClearBox Rights stated that the MLC should disclose the royalties on hold to parties involved in a dispute.³¹⁷

Based on these comments, the SNPRM proposed amending the Office's confidentiality regulations to require that the MLC "disclose the amount being held and reason for the hold to any individual or entity with a bona fide legal claim to such funds or a portion thereof."³¹⁸ The Office reasoned that this requirement would put the parties "on equal footing in developing a strategy for resolving the dispute, including the negotiation of a settlement."³¹⁹ The Office also proposed that the MLC "provide the equivalent of monthly royalty statements for the amounts held along with monthly updates concerning the status of the hold."³²⁰ These proposed disclosure requirements were not exclusive to termination-related disputes.

Commenters on this provision generally supported it, recognizing the value of disclosing the amount of royalties on hold to parties involved in the dispute.³²¹ The MLC, however, voiced concerns over administrability and potential misuse.

The MLC stated that the proposed rule would be burdensome, involve significant manual processing, and divert resources from other duties.³²²

³¹⁶ MLC NPRM Initial Comments at 13–14.

³¹⁷ ClearBox Rights NPRM Reply Comments at 6.

³¹⁸ 88 FR 65908, 65919, 65927.

³¹⁹ *Id.* at 65919.

³²⁰ *Id.*

³²¹ See Spirit Music Grp. SNPRM Initial Comments at 2 ("We do agree with the [Office's] position to disclose earnings and to provide royalty statements that are in suspense due to conflicts and disputes. We also agree the MLC portal should make this information visible."); Promopub SNPRM Initial Comments at 7 ("In the context of a dispute, we agree with the Office that if royalties are being held, the MLC should disclose the held amounts to the parties and provide updates as necessary during the pendency of the dispute. This information may be valuable to the parties for purposes of resolving the dispute.").

³²² MLC SNPRM Reply Comments at 8; MLC *Ex Parte* Letter at 4 (Feb. 21, 2024). But see MLC *Ex Parte* Letter at 4–5 (Feb. 21, 2024) (suggesting that the MLC regularly discloses total amounts of royalties on hold to interested parties).

The MLC also stated that providing "every party to a dispute" with "confidential information could . . . result in disclosure of confidential information to improper parties in some situations, and would be ripe for abuse,"³²³ and that it had not received member complaints "around such disclosures in the context of disputes or holds."³²⁴ Further, the MLC was concerned that the proposed regulation's use of the term "bona fide legal claim" was not a clear enough standard to administer, and that passing judgment on what is "bona fide" could expose it to liability.³²⁵ Finally, the MLC shared a general preference for prioritizing confidentiality and claimed that parties could obtain confidential information by agreement or via the legal process.³²⁶

The MLC later stated that, in the context of a termination-related dispute, it could "provide summary-level information to both the pre- and post-termination copyright owners" at "the outset of a dispute."³²⁷ This information would "identify the approximate amount of royalties to be distributed to a work in the first distribution occurring after the hold is requested and will be based upon information in the monthly reports of usage that The MLC received and processed at the time of the request."³²⁸ The MLC noted its preference that the Office not include provisions governing periodic (or initial) updates, including until it "has time to scope and develop a workable, systematic way to provide this information."³²⁹ If the Office were to retain such a requirement, those updates "should be limited to where a disclosure has been affirmatively requested and should not be more frequently than quarterly, to limit the burden and diversion of resources from critical path activities."³³⁰

Based on the foregoing, the Office is retaining a version of this rule, while

³²³ MLC SNPRM Reply Comments at 7.

³²⁴ MLC *Ex Parte* Letter at 3 (Mar. 22, 2024).

³²⁵ MLC SNPRM Reply Comments at 7–8.

³²⁶ *Id.* at 6–7.

³²⁷ MLC *Ex Parte* Letter at 2 (Mar. 22, 2024). The MLC previously stated that it could "provide the total amount of royalties being held in connection with disputed works" in certain "discrete and low-volume" circumstances, namely "situations of agreement or legal process." MLC SNPRM Reply Comments at 8.

³²⁸ MLC *Ex Parte* Letter at 2 (Mar. 22, 2024); see also MLC *Ex Parte* Letter at 4–5 (Feb. 21, 2024). Notwithstanding this offer, the MLC reiterated its concern that providing this information to parties for all disputes—i.e., not limited to parties in a termination-related dispute—would be burdensome. MLC *Ex Parte* Letter at 5 (Feb. 21, 2024).

³²⁹ MLC *Ex Parte* Letter at 2 (Mar. 22, 2024).

³³⁰ *Id.*

³¹³ See 88 FR 65908, 65919–20.

³¹⁴ See, e.g., MLC *Ex Parte* Letter at 5 (Feb. 5, 2024); Kobalt Music SNPRM Initial Comments at 3; Spirit Music Grp. SNPRM Initial Comments at 2; MAC et al. SNPRM Initial Comments at 3; Howard SNPRM Initial Comments at 8–9.

³¹⁵ North Music Grp. SNPRM Initial Comments at 3; see also, e.g., Howard SNPRM Initial Comments at 6, 8–9 (discussing concerns with power imbalances and how disputes could affect litigation with respect to ripeness and the statute of limitations).

narrowing its scope to make it easier for the MLC to administer. The final rule only applies to termination-related disputes, and limits disclosure requirements to the total amount of royalties being held and not the more granular information that would be contained in a royalty statement. It also reduces the periodic update requirement to apply only when requested by either party and only once a quarter. As the final rule applies to royalties being held pursuant to a termination-related dispute, the phrase “bona fide legal claim” was eliminated from the regulatory text.

F. Corrective Royalty Adjustment

1. Background

In the NPRM, the Office proposed a corrective royalty adjustment that would have “require[d] the MLC to adjust any royalties distributed under [its now-suspended Termination Policy], or distributed in a similar manner if not technically distributed pursuant to the [Termination Policy], within 90 days.”³³¹ At the outset, the Office notes that the MLC estimates the corrective adjustment to involve “less than \$2 million” and the “total amounts that would likely change hands” to terminating songwriters “would be less than \$1 million.”³³²

The NPRM explained that the adjustment provision was intended “to make copyright owners whole for any distributions the MLC made based on an erroneous understanding and application of current law.”³³³ Responding to the NPRM, parties asked the Office for further guidance regarding “how the proposed corrective royalty adjustment should work” in practice.³³⁴ The SNPRM subsequently proposed “a more detailed [regulation] that would lay out the operational procedures for the corrective royalty adjustment.”³³⁵

The SNPRM proposed that “the corrective adjustment would apply where the MLC’s prior erroneous application of the Exception, whether or not through its [Termination Policy], affected: (1) the distribution of blanket license royalties or matched historical royalties; (2) the holding of such royalties; or (3) the deduction from a DMP’s payable blanket license royalties

made by matching usage to voluntary licenses or individual download licenses.”³³⁶ For previously distributed overpayments made pursuant to the Termination Policy, the MLC would be required to notify the prior payee of the overpayment within thirty days, the prior payee would have thirty days to return the overpayment, and then the MLC would distribute those royalties to the proper payee with the next regular monthly royalty distribution. If the prior payee failed to repay the MLC, then the MLC would debit the prior payee’s future royalties—up to 50% of payable royalties each month—until it recovered the overpayment.³³⁷ The SNPRM also proposed that the royalty recovery and distribution instructions would apply where the MLC matched usage to a voluntary licensee or individual download licensee who was not the proper payee under the rule.³³⁸ For royalties that were held by the MLC following the suspension of its Termination Policy, the SNPRM proposed that they would be paid to the proper payee no later than thirty days after the final rule’s effective date.³³⁹ Finally, the SNPRM included a savings clause that would preserve the proper payee’s right to recover the overpayment outside of the corrective adjustment process.³⁴⁰

The SNPRM did not propose “any specific procedures” addressing circumstances where “a publisher [e.g., a prior payee] has already distributed a portion of the applicable royalties to its songwriters” because that “is a possibility with any type of adjustment for an overpayment.”³⁴¹ The Office, however, expressly sought further comments on that issue, including on a commenter’s proposal that the MLC only recoup the publisher’s share of those royalties.³⁴²

2. Comments

Several commenters, including songwriters, publishers, and others, favored a rule that includes a corrective adjustment.³⁴³ Promopub suggested a

relatively more aggressive approach to the corrective adjustment. First, where “a *prior payee’s* accrued royalties for a month exceed the full amount owed to the *proper payee* by at least twenty-five [percent],” it would require the MLC “to deduct the full amount owed to the *proper payee* from such monthly accrued royalties.”³⁴⁴ It also proposed that, if the proper payee was not paid back in full within six months of the MLC’s initial corrective adjustment payment, the Office “should require the terminated publisher to repay the balance to the MLC within 30 calendar days for the MLC to, in-turn, distribute to the proper payee within 30 calendar days of receipt.”³⁴⁵

Other commenters, however, disagreed that there should be a corrective adjustment, even though some of them supported post-termination copyright owners receiving post-termination royalties going forward.³⁴⁶ These commenters’ concerns focused on the burdens associated with administering a corrective adjustment and the Office’s authority to require such an adjustment. Regarding the Office’s authority, NMPA had concerns that the corrective

NPRM Reply Comments at 4–5 (“Any curative action required by the Office should, of course, be retroactive.”); Promopub NPRM Reply Comments at 1–2 (noting that it “fully supports the proposed repeal of the [MLC’s Termination] Policy and the corresponding proposed royalties adjustments” and that “other collecting organizations regularly employ retroactive royalty adjustments when music publishing royalties have been paid erroneously”); North Music Grp. NPRM Reply Comments at 2 (supporting the rule’s corrective adjustment); Miller NPRM Initial Comments at 1 (supporting 90-day adjustment period for the MLC); NSAI SNPRM Initial Comments at 2 (supporting corrective adjustments made “retroactively”); SONA et al. NPRM Reply Comments at 3 (supporting the rule’s corrective adjustment); ClearBox Rights NPRM Reply Comments at 3–4 (supporting the rule’s corrective adjustment provision and noting disagreement with NMPA and CMPA); McAnally & North *Ex Parte* Letter at 3–4 (Mar. 14, 2023) (voicing that these parties “categorically disagree” that the rule should not be “retroactive”); MAC et al. SNPRM Initial Comments at 3–4; Howard SNPRM Initial Comments at 2; ClearBox Rights SNPRM Reply Comments at 8–9.

³⁴⁴ Promopub SNPRM Initial Comments at 3. Promopub suggested these amendments, based on its concern that publishers may not return overpayments immediately and would “instead rely on the piecemeal monthly process offered.” *Id.*

³⁴⁵ *Id.*; see also Spirit Music Grp. SNPRM Initial Comments at 3 (“[A]pplying 50% of the debt to the erroneous party, who may be earning only a few dollars, will result in never ending debt for the erroneously paid party. We realize the USCO is concerned with the financial impact to the incorrect party, but it is at the expense of the entitled party.”).

³⁴⁶ See, e.g., CMPA NPRM Initial Comments at 1–2; NMPA NPRM Initial Comments at 4–6; NMPA *Ex Parte* Letter at 2 (Feb. 6, 2023); NMPA SNPRM Initial Comments at 1–2 & n.2; NMPA *Ex Parte* Letter at 2 (Jan. 24, 2024); Warner Chappell Music SNPRM Reply Comments at 2–3.

³³¹ 87 FR 64405, 64412.

³³² MLC *Ex Parte* Letter at 4 (Feb. 21, 2024).

³³³ 87 FR 64405, 64412.

³³⁴ 88 FR 65908, 65920 (citing MLC NPRM Initial Comments at 6–8; ClearBox Rights NPRM Reply Comments at 3–4; ClearBox Rights *Ex Parte* Letter at 2–4 (June 28, 2023); Howard NPRM Initial Comments at 6; Promopub NPRM Initial Comments at 2; Promopub NPRM Reply Comments at 3; North Music Grp. NPRM Reply Comments at 2).

³³⁵ 88 FR 65908, 65920.

³³⁶ *Id.* at 65921.

³³⁷ *Id.*

³³⁸ *Id.* at 65923.

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *Id.* at 65921.

³⁴² *Id.* (citing ClearBox Rights *Ex Parte* Letter at 3–4 (June 28, 2023); ClearBox Rights NPRM Reply Comments at 3–4).

³⁴³ See, e.g., BMG NPRM Initial Comments at 2 (“BMG fully supports . . . the requirement[] that . . . the MLC must pay post-termination royalties to those parties who own the U.S. copyrights in the works at issue and adjust these parties’ accounts in order that they may receive every dollar previously paid in error to terminated publishers.”); BMG NPRM Reply Comments at 1; Christian Castle

adjustment would be an impermissible “retroactive” rule and may also be an unconstitutional “taking.”³⁴⁷

Regarding songwriters’ and publishers’ ability to engage in a corrective adjustment, commenters stated that portions of these royalties would have already been distributed to songwriters and would be difficult to recover.³⁴⁸ Warner Chappell added that “retroactive debits would wreak havoc where songwriter contracts are royalty- or recoupment-based, as when recoupment has triggered the end of a contract’s term, or when a publisher has paid a contractually-due advance or bonus because the writer received a certain sum of royalties,” and that “[p]ublishers, songwriters, and others who’d received such payments would also bear tax and accounting obligations on income ‘wrongly’ received and already spent.”³⁴⁹

Commenters further suggested that it would also be administratively burdensome for the MLC to carry out a corrective adjustment.³⁵⁰ The MLC requested that the Office “take into consideration the impact of its rule on [its] regular royalty processing operations and timelines,” which are “orders of magnitude larger than the total sums that would be involved in corrective adjustments for statutory terminations.”³⁵¹ The MLC suggested a “more efficient” solution that “would avoid the problems associated with clawing back royalties from songwriters.”³⁵² This “alternative approach” would involve the MLC providing information to the prior payee and proper payee regarding the royalties distributed to the prior payee for post-termination periods.³⁵³ The parties would then voluntarily be able to make any corrective royalty adjustments themselves (a “voluntary

adjustment”).³⁵⁴ The MLC also said that a “claw-back and redistribution approach” could be used in combination with its proposal to incentivize compliance “if a significant period elapsed without resolution by the parties.”³⁵⁵

3. The Final Rule’s Approach

Having considered all comments on this issue, the Office is adopting a final rule with an approach to corrective royalty adjustments that is similar to the SNPRM’s proposal for the reasons stated in the NPRM and SNPRM, but with certain modifications, as discussed below. Other corrective adjustment provisions proposed in the SNPRM are included in the final rule, with minor conforming adjustments.

While the Office appreciates concerns regarding potential administrative burdens associated with a corrective adjustment, we continue to “disagree with commenters suggesting that there should not be any corrective adjustment because of the potential burdens involved.”³⁵⁶ As the Office previously explained, “[c]orrective royalty adjustments are common in the music industry and explicitly contemplated by the statute and the Office’s existing regulations.”³⁵⁷

The Office notes that the MLC already has guidelines to address the circumstances when it needs to make royalty distribution adjustments, including, for example:

- when there was “an incorrect match of a sound recording to a [musical work] registration”;
- where there was an under- or overpayment “attributable to a clerical or administrative error”; or
- in “other situations that The MLC may determine from time to time in its discretion.”³⁵⁸

These guidelines allow the MLC to adjust royalty distributions for uses going back to the first date the blanket license was available (*i.e.*, January 1, 2021).³⁵⁹

Moreover, the Office must consider not only the burdens to the MLC and publishers, but also fairness to terminating songwriters, and the comparative efficiency associated with the corrective adjustment. Without a

corrective adjustment, proper payees could be forced to bring their terminated publishers to court to unwind the MLC’s erroneous payments. This would lead to a multiplicity of lawsuits and associated unnecessary costs incurred by songwriters and publishers. It may also be illusory, as songwriters who were proper payees are less likely to sue to recover royalties that, in total, may be less than the cost of hiring an attorney to litigate the matter.³⁶⁰

i. Voluntary Adjustments

The first modification adopts the MLC’s suggestion to build in a voluntary process to reduce potential burdens on the parties or the MLC associated with any corrective adjustment. The initial step in this process is for the MLC to notify the relevant parties (*i.e.*, the prior payee, proper payee, and any successors in interest) of the overpayment within 30 days of the final rule’s effective date. Such notice must include: (1) a summary of the Office’s conclusions regarding the Exception; (2) a description of the corrective adjustment process laid out in the final rule, including the option for the parties to engage in a voluntary adjustment in lieu of an MLC-administered adjustment; (3) for each musical work at issue, the amounts that were erroneously paid to the prior payee that are subject to being adjusted; and (4) the respective contact information for the parties contained in the MLC’s records. With this information, the parties will have the opportunity to make the corrective adjustment themselves.

The parties would notify the MLC within another 30 days regarding whether the parties are engaging in a voluntary adjustment, were unable to reach such an agreement, or are still attempting to do so. If the parties engaged in a voluntary adjustment, the MLC will not make any adjustments in connection with the overpayment, but will retain records related to the voluntary adjustment. If the parties do not elect the voluntary adjustment option or if the MLC does not receive the required notice from the parties, the MLC will commence implementing the adjustment process within 30 days of

³⁴⁷ NMPA NPRM Initial Comments at 2, 4–6; *see also* NMPA *Ex Parte* Letter at 2 (Feb. 6, 2023); NMPA SNPRM Initial Comments at 2 n.2.

³⁴⁸ CMPA NPRM Initial Comments at 2; Warner Chappell Music SNPRM Reply Comments at 2–3; *see also* NMPA NPRM Initial Comments at 5; MLC *Ex Parte* Letter at 3 (Mar. 22, 2024).

³⁴⁹ Warner Chappell Music SNPRM Reply Comments at 2–3.

³⁵⁰ NMPA NPRM Initial Comments at 5 (noting that a corrective adjustment “would create a significant administrative and financial burden on the MLC, as well as on publishers or other recipients of these royalty payments who likely already distributed some portion of those amounts pursuant to their contractual obligations with their songwriters”); CMPA NPRM Initial Comments at 2 (explaining that “retroactive accounting might cause an undue hardship on The MLC as it would be well above its normal workload”); *see also* MLC *Ex Parte* Letter at 3–4 (Feb. 21, 2024); MLC *Ex Parte* Letter at 3–5 (Mar. 22, 2024).

³⁵¹ MLC SNPRM Reply Comments at 2–3.

³⁵² MLC *Ex Parte* Letter at 4 (Feb. 21, 2024).

³⁵³ *Id.*

³⁵⁴ *Id.* at 4–5.

³⁵⁵ *Id.* at 5.

³⁵⁶ 88 FR 65908, 65920–21.

³⁵⁷ *Id.* at 65921; *see* MAC et al. SNPRM Initial Comments at 3–4; Howard SNPRM Initial Comments at 2 (agreeing with Office’s position).

³⁵⁸ The MLC, *Guidelines for Adjustments* secs. 2.1, 3.4 (Jan. 2022), <https://f.hubspotusercontent40.net/hubfs/8718396/files/2022-02/MLC%20Guidelines%20for%20Adjustments.pdf>.

³⁵⁹ *Id.* at sec. 3.4.

³⁶⁰ *See* U.S. Copyright Office, *Copyright Small Claims* 1 (2013) (noting that “federal litigation is expensive and time-consuming, and therefore out of reach for many copyright owners” and that the problems of enforcement of modest claims “appears to be especially acute for individual creators”); *id.* at 118 (noting that songwriters would benefit from an alternative to Federal court to enforce the Copyright Act’s termination provisions (citing statement of Charles Sanders, SGA)); *see also, e.g.*, Howard SNPRM Initial Comments at 6 (noting perceived power and sophistication imbalances between authors and publishers).

the end of the voluntary adjustment period. If the parties notify the MLC that they are continuing efforts to reach an agreement, the MLC will not commence the corrective adjustment process unless and until it receives a subsequent notice that the parties were unable to reach an agreement. If such a subsequent notice is received more than 18 months after the effective date of the rule, the MLC may, but is not required to, adjust the overpayment.

The Office believes that it is reasonable to give the prior and proper payees an opportunity to engage in the adjustment process themselves, but that option would be ineffective without also requiring the MLC to implement a corrective adjustment as an alternative. Further, even if one party was willing to engage in a voluntary adjustment, the other party may wish to have the MLC implement the corrective adjustment for tax or accounting purposes.³⁶¹

While parties should jointly be able to determine the method they want to pursue to complete the adjustment, the Office does not believe that decision should be unbounded in time. Parties must decide whether the MLC is going to engage in a corrective adjustment (and notify the MLC of that decision) within 18 months of this rule's effective date. After that time, the MLC will not be required to initiate the corrective adjustment process.³⁶² The Office believes that the MLC should not be required to undertake the corrective adjustment indefinitely.

Finally, the Office is not adopting Promopub's repayment proposals for the corrective adjustment, as it wishes to first monitor how the adjustment process is working in practice, before making any significant amendments. We are, however, incorporating in the final rule Promopub's requested clarification that the MLC must provide royalty statements to proper payees when it makes a corrective adjustment.³⁶³

ii. Limiting Recovery of the Overpayment to the Publisher's Share

The Office did not receive significant comments directly responding to ClearBox Rights' proposal that the MLC may only recover the publisher's share of the overpayment to make the

corrective adjustment.³⁶⁴ Consequently, that provision is not included as a *requirement* in the final rule. The Office, however, sees no reason why songwriters, publishers, and the MLC could not agree to this type of agreement as a type of voluntary solution. Nothing in this rule prohibits the prior payee, proper payee, and MLC from all agreeing to engage in a corrective adjustment that only recovers and distributes the publisher's share of the overpayment.

The Office notes that the MLC stated that the rule envisioned a process that "requires a songwriter to pay back royalties to the pre-termination publisher" before that publisher returns funds to the MLC.³⁶⁵ The MLC claimed that this could be problematic for songwriters as "the process could lead to songwriters having to use funds to temporarily pay back royalties paid to them years ago, and then wait several months or more to get those funds back."³⁶⁶ It also noted that it does not "know the terms of the private contracts between the parties or how much was paid to the songwriter out of the total initial distribution,"³⁶⁷ making it problematic to recover only the publisher's share in any corrective adjustment procedure.

The MLC's comments imply that the rule *requires* songwriters (or other downstream royalty payees) to repay the prior payee before that prior payee would need to remit royalties to the MLC for further processing and distribution to the proper payee. Such an initial songwriter-repayment procedure, however, was not a requirement of the proposed rule and is not included in the final rule.

iii. Voluntary Licenses

The final rule does not require the MLC to make a corrective adjustment with respect to any amounts deducted, or held pending deduction, in connection with voluntary licenses. As discussed in Part III.A.3. above, the Office believes that voluntary licenses should be treated differently than section 115 statutory licenses.

3. The Final Rule Is Not an Impermissible Retroactive Rule or an Unconstitutional Taking

As an initial matter, the Office recognizes the unusual circumstances that led to this rule, namely that a government-designated collective adopted and distributed royalties pursuant to a policy that embodied a legal interpretation of the Exception, in conflict with the Office's prior guidance. While the MLC may have intended to ensure "prompt and uninterrupted royalty payments" with its actions,³⁶⁸ it is the Office (and not the MLC) that has authority to interpret the Copyright Act, including with respect to the Act's termination provisions in the context of the blanket license.³⁶⁹ As discussed at length above, the Office finds that the MLC's Termination Policy was based on an unreasonable reading of the Act, specifically regarding its understanding of the Exception. The final rule's corrective adjustment fixes that legal error.³⁷⁰

With that background, the Office now turns to the NMPA's objection that promulgating the proposed corrective adjustment provision is outside the Office's authority. First, NMPA suggested that this provision "may arguably be an unconstitutional taking in violation of the Fifth Amendment," as "it effectively takes property interests that pre-termination copyright owners may have had and transfers them to the post-termination copyright owner."³⁷¹ Second, it stated that a rule that required the MLC to make an

³⁶⁸ 87 FR 64405, 64407 (noting that "[i]n meetings with the Office, the MLC described its policy as a middle ground and explained that the policy was intended, in part, to avoid circumstances where parties' disputes could cause blanket license royalty payments to be held, pending resolution of the dispute, to the disadvantage of both songwriters and publishers").

³⁶⁹ While the Office acknowledges that, in the notice of proposed rulemaking in the earlier rulemaking proceeding about DMP reporting obligations, we suggested that the "MLC's interpretation of the [Exception] seems at least colorable," the Office's intention was to "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments," 5 U.S.C. 553(c), without prejudging the rulemaking's outcome, especially as termination was "one of the more complicated [topics] in [that earlier] proceeding" and parties had not provided much commentary on the MLC's theory. 85 FR 22518, 22532 n.210, 22533.

³⁷⁰ See, e.g., *Farmers Tel. Co. v. FCC*, 184 F.3d 1241, 1250 (10th Cir. 1999) (holding that when the FCC established an organization to prepare and file access tariffs, whose board was comprised of industry participants, and that organization issued an interpretation of a regulation which was later overruled by the agency, the agency's interpretation did not implicate the prohibition on retroactive rulemaking, including because the organization had "no authority to perform any adjudicatory or governmental functions").

³⁷¹ NMPA NPRM Initial Comments at 12.

³⁶¹ See Warner Chappell Music SNPRM Reply Comments at 2–3.

³⁶² As the final rule makes clear, the MLC will discontinue any recovery efforts if it is notified that the overpayment was recovered outside of the corrective adjustment process (e.g., where there was a subsequent agreement or settlement) or a legal proceeding was commenced seeking recovery of the overpayment.

³⁶³ Promopub SNPRM Initial Comments at 3.

³⁶⁴ 88 FR 65908, 65921. *But see* MAC et al. SNPRM Initial at 3–4 (stating that "'where a publisher has already distributed a portion of the applicable royalties to its songwriters,' we believe the Office's proposal regarding recovery of overpayment by the MLC is the proper course" (quoting 88 FR 65908, 65921)).

³⁶⁵ MLC *Ex Parte* Letter at 4 (Feb. 21, 2024).

³⁶⁶ *Id.*

³⁶⁷ *Id.*

adjustment to previously distributed royalties would be an impermissibly “retroactive” rule because it would “expressly undo royalty payments already made under the Blanket License pursuant to the MLC’s [then-]current [Termination Policy].”³⁷²

i. “Takings” Concerns

The Constitution’s Takings Clause prohibits the government from “depriving private persons of vested property rights except for a ‘public use’ and upon payment of ‘just compensation.’”³⁷³ It is self-evident that, for there to be a taking, a party must possess (and then be deprived of) a vested property right.

That is not what the corrective adjustment does. It merely applies the law as it existed at the time the MLC made the royalty distributions at issue. As the Office’s legal analysis in the NPRM, SNPRM, and Part III.A.1. above make clear, prior payees never had a vested property right to the post-termination royalties the MLC distributed to them. These royalties always belonged to the post-termination copyright owner. Because prior payees have no vested property right in the erroneous overpayments they received, recovering those amounts so they can be properly distributed in accordance with the law is not a “taking” within the meaning of the Takings Clause.³⁷⁴

ii. “Retroactivity” Concerns

The Office disagrees that the final rule’s corrective adjustment process to remedy improper prior MLC distributions constitutes an impermissible retroactive rule. NMPA is correct that, generally, a “statutory grant of legislative rulemaking authority will not . . . be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.”³⁷⁵ The Office is not, however, adopting a new retroactive rule regarding the effect of termination on section 115 statutory licenses. Instead, we are adopting a rule

applying the law as it existed at the time that the improper royalty distributions were made, and implementing the law by requiring parties to act in accordance with their legal obligations.

Promulgating the corrective adjustment process is the most efficient, reasonable, and least burdensome, means of fixing the MLC’s legal error. Far from establishing new obligations, the Office is merely enforcing preexisting obligations to ensure that parties who should have received the applicable payments from the start can obtain them.³⁷⁶

In promulgating this rule, the Office has considered any reasonable reliance interests and expectations of the prior payee and proper payee. We conclude that any disruption caused by the corrective adjustment process adopted in this rule is likely to be modest, and that any reliance interests or expectations are minimized by several factors. First, the MLC’s interpretation of the law was in doubt no later than September 2020, when the Office warned that parties viewed its interpretation as being “legally erroneous.”³⁷⁷ Second, as the SNPRM noted, “[c]orrective royalty adjustments are common in the music industry and explicitly contemplated by the statute[,] the Office’s existing regulations,” and the MLC’s own guidelines.³⁷⁸ Third, the MLC only started distributing royalties in 2021, its Termination Policy reflects a September 2021 date,³⁷⁹ and it was suspended in November 2022.³⁸⁰ To the extent that the corrective adjustment is potentially burdensome to prior payees, as discussed in Part III.F.2. above, the Office has both weighed that burden against the proper payees’ interests and

taken steps to alleviate those burdens by adjusting the rule’s regulatory language. We believe that the final rule’s corrective adjustment provision embodies the most reasonable course of action, as it implements the law as it already existed, while accounting for various administrability concerns.

G. Effective Date and Compliance Deadline

As is typical for many rules enacted by the Office, this final rule is effective 30 days after being published in the **Federal Register**. However, because the Office agrees with the MLC that it will need more than 30 days to update its processes and systems before it can reasonably be expected to implement most of the final rule,³⁸¹ its compliance deadline is extended to the first distribution of royalties based on its first payee snapshot after the date that is 90 days after the rule is published in the **Federal Register**. This deadline is based on the timing requested by the MLC³⁸² and is consistent with the Office’s practice of providing reasonable transition periods where MMA-related rules necessitate significant process changes and system updates and development.³⁸³

This later compliance deadline does not apply to four sections of the final rule: (1) the provision embodying the Office’s legal conclusions about how the Exception operates in connection with blanket licenses; (2) the provision embodying the Office’s legal conclusions about how the Exception operates in connection with individual download licenses; (3) the corrective royalty adjustment remedying the MLC’s previous misapplication of the

³⁷⁶ Moreover, this rule does not alter any party’s royalty entitlements. Although the Copyright Office is directing the MLC to adjust the amounts distributed to various entities, the MLC’s distributions do not constitute a final determination of the amounts to which any entity is entitled.

³⁷⁷ 87 FR 64405, 64407.

³⁷⁸ 88 FR 65908, 65921.

³⁷⁹ The original version of the MLC’s Termination Policy has a September 2021 date, *The MLC, Notice and Dispute Policy: Statutory Terminations* (Sept. 2021), <https://www.themlc.com/hubfs/Marketing/website/Original.pdf>, while the current version has an August 2022 date, *The MLC, Notice and Dispute Policy: Statutory Terminations* (Aug. 2022), <https://www.themlc.com/hubfs/Marketing/website/MLC%20Statutory%20Terminations%20Policy%20v1.2.pdf>. The Office is not aware when the MLC started making distributions based on an erroneous view of the Exception.

³⁸⁰ The MLC, *October Member Updates* (Nov. 1, 2022) (on file with the Office) (noting that “The MLC is immediately suspending its [Termination] Policy pending the outcome of the rulemaking proceeding initiated by the U.S. Copyright Office” and that it would be placing all royalties associated with work shares previously subject to that policy on hold “effective with the first distribution of blanket license royalties related to October 2022”).

³⁸¹ See MLC *Ex Parte* Letter at 3–4 (Mar. 22, 2024) (“This estimated timeframe accounts for basic code development, testing phases, and the general integration of new processes into The MLC’s end-to-end overlapping distribution cycle process. This estimate also recognizes that, particularly regarding the distribution of royalties from periods after the effective date, the rule as currently proposed requires The MLC to operationalize nuanced practices and processes including requirements that must be met before implementing a change, requirements for confirming receipt of appropriate notice of a change, and timelines for implementing a change (among others).”).

³⁸² *Id.* The Office does not believe the MLC needs the longer transition period it requested “[i]f the final rule directs The MLC to distribute royalties to a pre-termination owner and/or a post-termination owner, depending on when corresponding usage occurred, regardless of which party is the current payee registered in The MLC database.” See *id.* at 4. While that might be a possibility under the final rule going forward, it would appear to only arise in the context of adjustments, which the MLC is only required to make once annually. See 37 CFR 210.29(b)(2). Thus, the MLC has ample time to complete those particular updates.

³⁸³ See, e.g., 37 CFR 210.27(e)(2)(i), (e)(3)(ii), (e)(5).

³⁷² *Id.* at 5. NMPA also argued that directing the MLC to pay the copyright owner at the time of the use would “impact all subsequent adjustments and accrued interest payments made based on usage not only prior to a valid termination, but also prior to any other type of ownership transfer.” *Id.* This second point is discussed in depth in Part III.B. above.

³⁷³ *Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994) (referencing U.S. Const. Amend. V).

³⁷⁴ See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1027 (1992) (observing that, under a takings claim, compensation is not owed where the government is depriving a person of something that they were not entitled to in the first place).

³⁷⁵ NMPA NPRM Initial Comments at 5, n.8 (quoting *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988)).

Exception; and (4) the provision requiring the MLC to adopt notice requirements for non-termination-related payee changes.

The first two provisions are carved out because they state the accurate interpretation of the law with respect to the Exception and section 115 statutory licenses. Because the MLC has already suspended its Termination Policy and, to the best of the Office's knowledge, is not currently making distributions in a manner inconsistent with these provisions, it should not need any additional time to comply with the prohibitions they contain.

The second two provisions are carved out because those provisions have their own separate timing requirements written into the regulatory text. With respect to the corrective adjustment, the MLC is required to send and receive certain notices sooner than the general compliance deadline, which the Office believes is reasonable to require given the relatively low burden involved. Additionally, the rule requires the MLC to distribute amounts currently on hold sooner than the general compliance deadline because it did not explain why it needed more time for that particular action and the equities weigh in favor of terminating parties obtaining their royalties in a timely manner.

The Copyright Office may, upon the MLC's request, extend the compliance deadlines in our discretion by providing public notice through our website.³⁸⁴

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

Final Regulations

For the reasons set forth in the preamble, the U.S. Copyright Office amends 37 CFR part 210 as follows:

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

■ 2. Amend § 210.22 as follows:

■ a. Redesignate paragraphs (d), (e), (f), (g), (h), (i), and (j) as paragraphs (e), (g), (h), (i), (j), (n), and (p), respectively; and

■ b. Add new paragraphs (d) and (f) and paragraphs (k), (l), (m) and (o).

The additions read as follows:

§ 210.22 Definitions.

* * * * *

(d) The term *derivative works exception* means the limitations contained in 17 U.S.C. 203(b)(1) and 304(c)(6)(A).

* * * * *

(f) The term *historical unmatched royalties* means the accrued royalties transferred to the mechanical licensing collective by digital music providers pursuant to 17 U.S.C. 115(d)(10) and § 210.10.

* * * * *

(k) The term *matched historical royalties* means historical unmatched royalties attributable to a musical work (or share thereof) matched after being transferred to the mechanical licensing collective.

(l) The term *payee snapshot* means the royalty payee information in the mechanical licensing collective's records as of a particular date used for a particular monthly royalty distribution.

(m) The term *pre-termination copyright owner* means the owner of the relevant copyright immediately prior to:

(1) The effective date of termination for an effective termination under 17 U.S.C. 203 or 304; or

(2) The purported effective date of termination for a claimed, disputed, or invalid termination under 17 U.S.C. 203 or 304.

* * * * *

(o) The term *terminating party* means:

(1) A party entitled under 17 U.S.C. 203 or 304 to terminate a grant, who is seeking to terminate such a grant under such provisions;

(2) A party who has effectuated termination of a grant under 17 U.S.C. 203 or 304;

(3) A party to whom rights have reverted or are expected to revert pursuant to the effective termination of a grant under 17 U.S.C. 203 or 304; or

(4) A successor in interest to a party identified in paragraph (o)(1), (2), or (3) of this section (e.g., a subsequent publisher or administrator).

* * * * *

■ 3. Amend § 210.27 by redesignating paragraph (g)(2)(ii) as paragraph (g)(2)(ii)(A) and adding paragraph (g)(2)(ii)(B).

The addition reads as follows:

§ 210.27 Reports of usage and payment for blanket licensees.

* * * * *

(g) * * *

(2) * * *

(ii)(A) * * *

(B) To the extent applicable to the mechanical licensing collective's efforts under paragraph (g)(2)(ii)(A) of this section:

(1) The derivative works exception does not apply to any individual download license and no individual or entity may be construed as the copyright owner or royalty payee of a musical work (or share thereof) used pursuant to any such license based on the derivative works exception.

(2) The derivative works exception does not apply to any voluntary license and no individual or entity may be construed as the copyright owner or royalty payee of a musical work (or share thereof) used pursuant to any such license based on the derivative works exception, unless and only to the extent that the mechanical licensing collective is directed otherwise pursuant to:

(i) The resolution of a dispute regarding the application of the derivative works exception to a particular voluntary license or its underlying grant of authority; or

(ii) A notice submitted under § 210.30(c)(1).

* * * * *

■ 4. Amend § 210.29 as follows:

■ a. In paragraph (a), remove "reporting obligations" and add in its place "reporting and payment obligations" and add two sentences at the end; and

■ b. Add paragraphs (b)(4), (j), and (k).

The additions read as follows:

§ 210.29 Reporting and distribution of royalties to copyright owners by the mechanical licensing collective.

(a) * * * This section also prescribes reporting and payment obligations of the mechanical licensing collective to copyright owners for the distribution of matched historical royalties. This section does not apply to distributions of unclaimed accrued royalties under 17 U.S.C. 115(d)(3)(J).

(b) * * *

(4)(i)(A) The copyright owner of a musical work (or share thereof) as of the last day of a monthly reporting period in which such musical work is used pursuant to a blanket license is entitled to all royalty payments and other distributable amounts (e.g., accrued interest), including any subsequent adjustments, for the uses of that musical work occurring during that monthly reporting period, unless such entitlement has been transferred to another individual or entity. As used in the previous sentence, the term *uses* means all covered activities engaged in under blanket licenses as reported by blanket licensees to the mechanical licensing collective.

(B)(1) For the purpose of making any distribution of royalties or other amounts (e.g., accrued interest), as a matter of reasonable administrability, the mechanical licensing collective, in

³⁸⁴ Any extensions will be reflected on the Copyright Office's website at <https://copyright.gov/rulemaking/mma-termination/>.

the absence of a dispute or investigation, shall treat the individual or entity identified in its records as of the date of the payee snapshot used by the mechanical licensing collective for the applicable distribution as legally authorized to receive such distribution, unless the mechanical licensing collective is notified otherwise.

(2) Nothing in paragraph (b)(4)(i)(B)(1) of this section shall be construed as absolving the mechanical licensing collective of its responsibility to engage in reasonable verification and antifraud efforts in connection with the registration and claiming of musical works (or shares thereof).

(3) No distribution made by the mechanical licensing collective shall alter or prejudice any party's legal entitlement to any of the distributed funds or such party's ability to collect such funds from someone other than the mechanical licensing collective if such funds were not distributed to such party by the mechanical licensing collective.

(4) Notwithstanding any other provision of this section, where the mechanical licensing collective distributes royalties to the wrong party and that error is caused by the actions of the mechanical licensing collective, the mechanical licensing collective shall promptly correct its error upon learning of it. For purposes of this paragraph (b)(4)(i)(B)(4), an error is not caused by the mechanical licensing collective where it acts in accordance with paragraph (b)(4)(i)(B)(1) of this section or otherwise reasonably relies on information provided to it by others that turns out to be inaccurate.

(C) The derivative works exception does not apply to any blanket license and no individual or entity may be construed as the copyright owner or royalty payee of a musical work (or share thereof) used pursuant to a blanket license based on the derivative works exception.

(ii) Subject to the requirements of and except to the extent permitted by § 210.30, the mechanical licensing collective shall not distribute royalties in a manner inconsistent with paragraph (b)(4)(i) of this section.

* * * * *

(j) *Matched historical royalties.* The mechanical licensing collective shall report and distribute matched historical royalties and related accrued interest and adjustments in the same manner and subject to the same requirements that apply to the reporting and distribution of royalties for musical works licensed under the blanket license, as if such matched historical royalties were royalties payable for

musical works licensed under the blanket license, but subject to the following clarifications:

(1) Matched historical royalties shall be treated as accrued royalties distributable under paragraph (b)(1)(ii) of this section and shall be separately identified in applicable royalty statements.

(2) With respect to the requirements of paragraph (b)(2) of this section, royalty distributions based on adjustments to matched historical royalties reflected in cumulative statements of account delivered to the mechanical licensing collective by digital music providers pursuant to § 210.10(b)(3)(i) shall be made by the mechanical licensing collective at least once annually, upon submission of one or more statements of adjustment delivered to the mechanical licensing collective by digital music providers pursuant to § 210.10(k), to the extent any such statement of adjustment is delivered to the mechanical licensing collective during such annual period.

(k) *Corrective royalty adjustment.* Any distribution under paragraph (b) of this section (including any distribution of matched historical royalties, or related accrued interest or adjustments) or deduction under § 210.27(g)(2)(ii) (other than a deduction related to a voluntary license) made by the mechanical licensing collective before August 8, 2024 and based on an application of the derivative works exception that is inconsistent with paragraph (b)(4)(i)(C) of this section (including as such paragraph applies to matched historical royalties through paragraph (j) of this section) or § 210.27(g)(2)(ii)(B)(1), as each of those provisions exist on August 8, 2024, shall be subject to adjustment by the mechanical licensing collective. Any amounts held by the mechanical licensing collective in connection with such application of the derivative works exception as of August 8, 2024 shall also be subject to adjustment. The adjustment process shall be as follows:

(1)(i) To the extent required by this paragraph (k), where a royalty payee (the *prior payee*) received amounts from the mechanical licensing collective that such prior payee would not have received had the distribution been made in a manner consistent with the application of the derivative works exception embodied in paragraph (b)(4)(i)(C) of this section, the mechanical licensing collective shall, except as otherwise provided for by this paragraph (k), recover such overpayment from such prior payee and shall distribute it to the royalty payee (the *proper payee*) who is entitled to such funds under the application of the

derivative works exception embodied in paragraph (b)(4)(i)(C) of this section.

(ii) The mechanical licensing collective shall notify each prior payee and proper payee (collectively, the *parties*) of the overpayment no later than August 8, 2024. Such notice shall contain at least the following information:

(A) A summary of the Copyright Office's conclusions embodied in paragraph (b)(4)(i)(C) of this section and § 210.27(g)(2)(ii)(B);

(B) A description of the adjustment process detailed in this paragraph (k), including the option for the parties to reach a voluntary agreement concerning the overpayment;

(C) For each musical work (or share thereof) at issue, the amount of the overpayment; and

(D) The respective contact information for each of the parties contained in the mechanical licensing collective's records.

(iii) After receiving such notice, the parties may attempt to reach a voluntary agreement with respect to the overpayment. Before September 9, 2024, the parties shall notify the mechanical licensing collective that:

(A) The parties reached a voluntary agreement with respect to the overpayment;

(B) The parties are in the process of attempting to reach a voluntary agreement with respect to the overpayment; or

(C) The parties did not reach a voluntary agreement with respect to the overpayment.

(iv) The mechanical licensing collective shall act as follows in connection with such notice:

(A) If the mechanical licensing collective receives notice that the parties reached a voluntary agreement with respect to the overpayment, it shall not make any adjustment in connection with the overpayment.

(B) If the mechanical licensing collective receives notice that the parties are in the process of attempting to reach a voluntary agreement with respect to the overpayment, it shall not take any action unless and until it receives a subsequent notice. If the subsequent notice states that the parties reached a voluntary agreement with respect to the overpayment, the mechanical licensing collective shall not make any adjustment in connection with the overpayment. If the subsequent notice states that the parties did not reach a voluntary agreement with respect to the overpayment, the mechanical licensing collective shall commence the adjustment process described in paragraph (k)(1)(v) of this

section. If such a subsequent notice is received after August 8, 2024, the mechanical licensing collective shall not be required to make any adjustment in connection with the overpayment.

(C) If the mechanical licensing collective receives notice that the parties did not reach a voluntary agreement with respect to the overpayment, it shall commence the adjustment process described in paragraph (k)(1)(v) of this section.

(D) If the mechanical licensing collective does not receive a timely notice under paragraph (k)(1)(iii) of this section, it shall commence the adjustment process described in paragraph (k)(1)(v) of this section.

(v) Where, pursuant to paragraph (k)(1)(iv) of this section, the mechanical licensing collective is required to commence an adjustment process with respect to the overpayment, the following requirements shall apply:

(A) Not later than October 7, 2024 or 30 calendar days after receiving an applicable subsequent notice under paragraph (k)(1)(iv)(B) of this section, whichever is later, the mechanical licensing collective shall notify the prior payee that the adjustment process has commenced and request that the prior payee return the overpayment no later than November 6, 2024 or 30 calendar days after receiving the notice, whichever is later. Any returned amounts shall be distributed, accompanied by an appropriate royalty statement, to the proper payee with the next regular monthly royalty distribution to occur at least 30 calendar days after any such amounts are returned.

(B) If such overpayment is not returned in full in accordance with paragraph (k)(1)(v)(A) of this section, then beginning with the first distribution of royalties to occur at least 30 calendar days after the deadline specified in that paragraph, 50 percent of any and all accrued royalties and other distributable amounts (*e.g.*, accrued interest) that would otherwise be payable to the prior payee from the mechanical licensing collective each month, regardless of the associated work (or share), shall instead be distributed, accompanied by an appropriate royalty statement, to the proper payee until such time as the full amount of the overpayment is recovered. Where the amount to be recovered under this paragraph during a monthly royalty distribution constitutes less than 50 percent of the applicable accrued royalties and other distributable amounts, the mechanical licensing collective shall recover the full amount of the overpayment. Where more than

one proper payee is entitled to a corrective royalty adjustment from the same prior payee for different musical works, any amounts recovered and distributed under this paragraph (k)(1)(v)(B) shall be apportioned equally among such proper payees.

(2) Where, as of August 8, 2024, the mechanical licensing collective is holding amounts that would constitute an overpayment under paragraph (k)(1) of this section if such amounts had been distributed to the prior payee, such amounts shall be distributed, accompanied by an appropriate royalty statement, to the proper payee no later than the first distribution of royalties based on the first payee snapshot taken by the mechanical licensing collective at least 30 calendar days after August 8, 2024.

(3) The recovery and distribution processes described in paragraphs (k)(1) and (2) of this section shall also apply, as applicable, to amounts deducted, or held pending deduction, by the mechanical licensing collective under § 210.27(g)(2)(ii), other than with respect to amounts relating to voluntary licenses, where the proper payee is not the payee to whom the relevant usage was originally matched. For purposes of this paragraph (k)(3), the payee to whom the relevant usage was originally matched shall constitute the *prior payee* as that term is used elsewhere in this paragraph (k).

(4) Nothing in this paragraph (k) shall be construed as prejudicing the proper payee's right or ability to otherwise recover such overpayment from the prior payee outside of the adjustment process detailed in this paragraph (k). Where the overpayment is recovered outside of such adjustment process or a legal proceeding is commenced seeking recovery of the overpayment, the mechanical licensing collective must be notified. Upon receipt of such notice, the mechanical licensing collective shall discontinue any recovery efforts engaged in under this paragraph (k).

(5) Notwithstanding the adjustment process detailed in this paragraph (k), the parties and the mechanical licensing collective may voluntarily agree to an alternative adjustment process.

■ 5. Revise § 210.30 to read as follows:

§ 210.30 Transfers of copyright ownership, royalty payee changes, and related disputes.

(a) *General.* This section prescribes rules governing the mechanical licensing collective's administration of transfers of copyright ownership, other royalty payee changes, and related disputes.

(b) *Requirements for the mechanical licensing collective to implement a change.* The mechanical licensing collective shall not take any action to implement or give effect to any transfer of copyright ownership (including a transfer resulting from an effective termination under 17 U.S.C. 203 or 304) or other change to a royalty payee, unless the requirements of paragraph (c) of this section are satisfied or the mechanical licensing collective is acting in connection with the resolution of a dispute. Where the requirements of paragraph (c) of this section are satisfied, the mechanical licensing collective shall implement and give effect to such transfer or other change in accordance with paragraph (d) of this section.

(c) *Notices of change.* The mechanical licensing collective must be appropriately notified in writing with respect to any transfer or other change described in paragraph (b) of this section. Subject to the further requirements of this paragraph (c), such notice must comply with any reasonable formatting and submission requirements that the mechanical licensing collective establishes and makes publicly available on its website. No fee may be charged for submitting such a notice. Upon submitting such a notice, or any additional information related to such notice, the submitter shall be provided with a prompt response from the mechanical licensing collective confirming receipt of the notice, or any additional information related to such notice, and the date of receipt.

(1)(i)(A) Subject to paragraph (c)(1)(ii) of this section, for any transfer or other payee change not addressed by paragraph (c)(2) of this section, the mechanical licensing collective shall be notified of such transfer or payee change in accordance with any reasonable requirements that the mechanical licensing collective establishes and makes publicly available on its website.

(B) If such requirements are not publicly available on the mechanical licensing collective's website as of July 9, 2024, the mechanical licensing collective shall adopt such requirements and make them available as soon as reasonably practicable, but no later than September 9, 2024, unless the Copyright Office allows for an extension in its discretion. The mechanical licensing collective shall make such requirements publicly available on its website at least 30 calendar days before such requirements become effective.

(C) The mechanical licensing collective shall make any amendment to such requirements publicly available on its website at least 30 calendar days

before such amendment becomes effective, unless the mechanical licensing collective can articulate good cause for not providing such advanced notice. In no case shall an amendment be effective before being published on the mechanical licensing collective's website.

(ii) Notwithstanding paragraph (c)(1)(i) of this section, any notice seeking to change the royalty payee from a terminating party (or its designee) to a corresponding pre-termination copyright owner (or its designee) is subject to the following additional requirements:

(A) The notice must be signed after the effective date of termination.

(B) The notice must set forth in plain language an acknowledgement that the requested action alters the royalty payee from that established by § 210.29(b)(4)(i).

(2) Specific requirements for notices about transfers of copyright ownership resulting from an effective termination under 17 U.S.C. 203 or 304 are as follows:

(i) The required notice shall include all of the following information:

(A) A true, correct, complete, and legible copy of the signed and as-served notice of termination submitted to the Copyright Office for recordation pursuant to § 201.10.

(B) A true, correct, complete, and legible copy of the statement of service submitted to the Copyright Office for recordation pursuant to § 201.10, if one was submitted.

(C) Either:

(1) Proof, as to a particular musical work, that the notice of termination was recorded in the Copyright Office before the effective date of termination. Where the notice of termination identifies more than one musical work, each musical work shall be treated independently; or

(2) If the Copyright Office has not yet recorded the notice of termination, proof, as to a particular musical work, that the notice of termination was submitted to the Copyright Office for recordation before the effective date of termination, provided that proof, as to such musical work, that the notice of termination was recorded in the Copyright Office before the effective date of termination is delivered to the mechanical licensing collective at a later date. Where the notice of termination identifies more than one musical work, each musical work shall be treated independently.

(D) The terminating party, identified by name and any known and appropriate unique identifiers, appropriate contact information for the terminating party or their administrator

or other representative, and, if the terminating party is not already receiving royalty distributions from the mechanical licensing collective, any additional information that is necessary for the terminating party to receive royalty distributions from the mechanical licensing collective.

(ii) With respect to the information required by paragraphs (c)(2)(i)(A) through (C) of this section, providing an official Copyright Office certification for any such information shall not be required. If the mechanical licensing collective has good cause to doubt the authenticity of any such information, the mechanical licensing collective shall either seek verification from the Copyright Office or request that such verification be provided to the mechanical licensing collective by the submitter.

(iii) Where the information required by paragraph (c)(2)(i) of this section is insufficient to enable the mechanical licensing collective to implement and give effect to the termination with respect to a particular musical work, the mechanical licensing collective shall promptly correspond with the terminating party and the pre-termination copyright owner (or their respective representatives) to attempt to obtain the minimum necessary information.

(iv) The required notice shall be submitted and signed by either the terminating party or the pre-termination copyright owner (or their respective duly authorized representatives). Such signature shall be accompanied by the name and title of the person signing the notice and the date of the signature. The notice may be signed electronically. The person signing the notice shall certify that they have appropriate authority to submit the notice to the mechanical licensing collective and that all information submitted as part of the notice is true, accurate, and complete to the best of the signer's knowledge, information, and belief, and is provided in good faith. If the notice is submitted by the terminating party, the following additional steps shall be required:

(A) The mechanical licensing collective shall notify the pre-termination copyright owner about the terminating party's notice within 15 calendar days of receiving either the notice or the last piece of information necessary for the mechanical licensing collective to implement the change as to a particular musical work, whichever is later, and shall contemporaneously alert the terminating party that such notice was sent to the pre-termination copyright owner.

(B) If the pre-termination copyright owner does not initiate a dispute with the mechanical licensing collective regarding the termination, in accordance with paragraph (e) of this section, within 30 calendar days of receiving such notice, the mechanical licensing collective shall implement and give effect to the transfer of copyright ownership resulting from the termination, in accordance with paragraph (d) of this section. Nothing in this paragraph (c)(2)(iv)(B) shall prevent the pre-termination copyright owner from disputing the termination with the mechanical licensing collective at a later date or challenging the termination in a legal proceeding.

(v) Where there is more than one terminating party or pre-termination copyright owner, the required notice shall include a satisfactory identification of any applicable ownership shares for each musical work subject to the termination. Where there is more than one terminating party, the notice shall be effective only as to those terminating parties whose information is provided in accordance with paragraph (c)(2)(i)(D) of this section. Where there is more than one terminating party, a notice that is signed and certified by any one terminating party in accordance with paragraph (c)(2)(iv) of this section is sufficient as to all terminating parties.

(vi)(A) A notice submitted to the mechanical licensing collective pursuant to this paragraph (c)(2) may be withdrawn in accordance with any reasonable requirements that the mechanical licensing collective establishes and makes publicly available on its website.

(B) A notice submitted to the mechanical licensing collective pursuant to this paragraph (c)(2) may be converted into a notice under paragraph (c)(1) of this section in accordance with any reasonable requirements that the mechanical licensing collective establishes and makes publicly available on its website.

(C) Such requirements shall comply with the requirements of paragraphs (c)(1)(i)(B) and (C) of this section.

(d) *Implementation of a change.* Upon receiving a notice that complies with the requirements of paragraph (c) of this section, the mechanical licensing collective shall implement and give effect to the identified transfer or other payee change on a per work basis as follows:

(1)(i) Except as provided by paragraph (d)(1)(ii) of this section, where the mechanical licensing collective receives the notice before the first day of the first monthly reporting period to commence

after the change is effective, the mechanical licensing collective shall implement and give effect to the change, on a prospective basis, beginning no later than the first distribution of royalties for such reporting period.

(ii) Where the notice concerns a transfer of copyright ownership resulting from an effective termination under 17 U.S.C. 203 or 304 submitted by the terminating party under paragraph (c)(2) of this section, and the pre-termination copyright owner does not initiate a dispute as described in paragraph (c)(2)(iv)(B) of this section, where the mechanical licensing collective receives the notice at least 45 calendar days before the first day of the first monthly reporting period to commence after the change is effective, the mechanical licensing collective shall implement and give effect to the change, on a prospective basis, beginning no later than the first distribution of royalties for such reporting period.

(2)(i) Except as provided by paragraph (d)(2)(ii) of this section, where the mechanical licensing collective receives the notice on or after the first day of the first monthly reporting period to commence after the change is effective, the mechanical licensing collective shall implement and give effect to the change, on a prospective basis, beginning no later than the first distribution of royalties based on the first payee snapshot taken by the mechanical licensing collective at least 30 calendar days after the mechanical licensing collective receives the notice.

(ii) Where the notice concerns a transfer of copyright ownership resulting from an effective termination under 17 U.S.C. 203 or 304 submitted by the terminating party under paragraph (c)(2) of this section, and the pre-termination copyright owner does not initiate a dispute as described in paragraph (c)(2)(iv)(B) of this section, where the mechanical licensing collective receives the notice less than 45 calendar days before the first day of the first monthly reporting period to commence after the change is effective, the mechanical licensing collective shall implement and give effect to the change, on a prospective basis, beginning no later than the first distribution of royalties based on the first payee snapshot taken by the mechanical licensing collective at least 30 calendar days after the pre-termination copyright owner's deadline to dispute under paragraph (c)(2)(iv)(B) of this section.

(3) Where additional information related to the notice is required to enable the mechanical licensing collective to implement and give effect to the change, and such information is

received after receipt of the notice, the timing requirements described in paragraphs (d)(1) and (2) of this section shall be based on the date that the last piece of necessary information is received by the mechanical licensing collective.

(4) Where the change is effective as to one or more monthly reporting periods for which the mechanical licensing collective distributed royalties before implementing and giving effect to the change, the mechanical licensing collective may, but is not required to, make a corrective royalty adjustment if the notice requests one.

(5) If the mechanical licensing collective does not implement and give effect to the change in accordance with the deadlines prescribed by paragraphs (d)(1) through (3) of this section, the mechanical licensing collective shall implement and give effect to the change as soon as reasonably practicable, provided that the change is implemented and given effect by the mechanical licensing collective no later than the next regular monthly royalty distribution to occur either after the implementation deadline that originally applied under paragraphs (d)(1) through (3) of this section, as applicable, or at least 30 calendar days after the date that the mechanical licensing collective learns that the change was not implemented on time, whichever is later. In such cases, the mechanical licensing collective shall implement and give effect to the change as of the implementation deadline that originally applied under paragraphs (d)(1) through (3) of this section, as applicable, including by making any necessary corrective royalty adjustments.

(6) No action or inaction by the mechanical licensing collective with respect to implementing and giving effect to a transfer or other payee change shall alter or prejudice any party's rights to royalties pursuant to such change or such party's right to collect such royalties from someone other than the mechanical licensing collective if such royalties were not distributed to such party by the mechanical licensing collective.

(7) Where the notice concerns a transfer of copyright ownership resulting from an effective termination under 17 U.S.C. 203 or 304 submitted under paragraph (c)(2) of this section, and the notice is accompanied by proof that the notice of termination was submitted to the Copyright Office for recordation, but the notice is not accompanied by proof that it was recorded in the Copyright Office before the effective date of termination, the

mechanical licensing collective shall act as follows:

(i) Upon subsequent receipt of proof that the notice of termination was recorded in the Copyright Office before the effective date of termination, the mechanical licensing collective shall treat the proof of recordation as a type of additional information under paragraph (d)(3) of this section. The mechanical licensing collective shall not implement or give effect to any such termination unless and until such proof is received.

(ii) Until receipt of the proof described in paragraph (d)(7)(ii)(B) or (C) of this section, as the case may be, and subject to paragraph (d)(7)(ii)(D) of this section the mechanical licensing collective shall hold applicable accrued royalties and accrued interest pending receipt of proof that the notice of termination was recorded in the Copyright Office before the effective date of termination as follows:

(A) The mechanical licensing collective shall commence holding such amount no later than the implementation deadline that would apply under paragraphs (d)(1) through (3) of this section, as applicable, if proof of recordation had been provided with the notice.

(B) After receiving proof that the notice of termination was recorded in the Copyright Office before the effective date of termination is received, the mechanical licensing collective shall implement and give effect to the termination as provided by paragraphs (d)(1) through (5) and (d)(7)(i) of this section, as applicable.

(C) After receiving proof that the Copyright Office refused to record the notice of termination, the recordation submission was withdrawn, or the notice of termination was recorded on or after the effective date of termination, the mechanical licensing collective shall release the held funds to the pre-termination copyright owner.

(D) If the mechanical licensing collective does not receive the proof described in either paragraph (d)(7)(ii)(B) or (C) of this section within 6 months after the mechanical licensing collective commences holding applicable accrued royalties and accrued interest, the mechanical licensing collective shall request that the terminating party provide an update about the status of the relevant recordation submission. If the submission remains pending at that time, the mechanical licensing collective may continue to request periodic updates from the terminating party in its discretion. Upon receiving the proof described in either paragraph

(d)(7)(ii)(B) or (C), the mechanical licensing collective shall act in accordance with paragraph (d)(7)(ii)(B) or (C), as the case may be.

(iii) Where a notice of termination identifies more than one musical work, whether the notice is timely recorded in the Copyright Office shall be determined on a per work basis with respect to each musical work identified in the notice.

(e) *Termination disputes.* The following requirements shall apply to any dispute initiated with the mechanical licensing collective regarding a termination under 17 U.S.C. 203 or 304:

(1) Such a dispute must be with regard to the validity of the termination or the application of the derivative works exception to a particular voluntary license or its underlying grant of authority.

(2) Only a pre-termination copyright owner (or its representative) may initiate such a dispute.

(3)(i) If a pre-termination copyright owner (or its representative) initiates such a dispute and delivers the information required to substantiate the dispute to the mechanical licensing collective under paragraph (e)(4) of this section, the mechanical licensing collective shall hold applicable accrued royalties and accrued interest pending resolution of the dispute.

(ii) With respect to any dispute concerning the application of the derivative works exception to a particular voluntary license or its underlying grant of authority:

(A) The mechanical licensing collective shall, as needed and on an ongoing basis, invoice any applicable digital music provider for the royalties associated with the dispute.

(B) The mechanical licensing collective shall hold such royalties in the same manner and at the same interest rate as any other funds held pursuant to 17 U.S.C. 115(d)(3)(H)(ii).

(C) Where the resolution of the dispute results in payment being made by the mechanical licensing collective pursuant to a blanket license, the payment must include any accrued interest. Where the resolution of the dispute results in a digital music provider paying a voluntary licensor, the mechanical licensing collective must promptly return the held amount, including any accrued interest, to the

digital music provider accompanied by notice that the dispute has been resolved in such manner.

(4) The minimum information that must be delivered to the mechanical licensing collective to substantiate a termination-related dispute shall consist of the following:

(i) A cognizable explanation of the grounds for the dispute, articulated with specificity.

(ii) Documentation sufficient to support the grounds for the dispute, which shall consist of the following:

(A) A true, correct, complete, and legible copy of each grant in dispute.

(B) A true, correct, complete, and legible copy of any other agreement or document necessary to support the grounds for the dispute.

(C) Such other documentation or substantiating information as the mechanical licensing collective may reasonably require pursuant to a dispute policy adopted under 17 U.S.C. 115(d)(3)(K).

(iii) A satisfactory identification of each musical work in dispute.

(iv) A certification that the submitter has appropriate authority to initiate the dispute with the mechanical licensing collective and that all information submitted in connection with the dispute is true, accurate, and complete to the best of the submitter's knowledge, information, and belief, and is provided in good faith.

(v) The following additional information if the dispute concerns the application of the derivative works exception to a particular voluntary license or its underlying grant of authority:

(A) A true, correct, complete, and legible copy of each voluntary license at issue.

(B) A satisfactory identification of each relevant sound recording that constitutes a derivative work within the meaning of 17 U.S.C. 101 that was prepared pursuant to appropriate authority.

(C) The date of preparation for each such sound recording, which must be before the effective date of termination.

(5) Notwithstanding anything to the contrary that may be contained in § 210.34, any and all documentation provided to the mechanical licensing collective pursuant to paragraph (e)(4) of this section shall be disclosed to all parties to the dispute. If a party to the

dispute is not a party or successor to a party to an otherwise confidential document, such disclosure shall be subject to an appropriate written confidentiality agreement.

(6) Any dispute initiated with the mechanical licensing collective under this paragraph (e) shall be limited to those musical works identified pursuant to paragraph (e)(4)(iii) of this section. The existence of such a dispute shall not affect the implementation of a change with respect to any other musical work identified in the same notice of change and that is not subject to a dispute.

■ 6. Amend § 210.34 as follows:

■ a. In paragraph (c)(5), remove “to paragraph (c)(4) of” and add in its place “to paragraph (c)(4) or (6) of”; and

■ b. Add paragraph (c)(6).

The addition reads as follows:

§ 210.34 Treatment of confidential and other sensitive information.

* * * * *

(c) * * *

(6) Notwithstanding paragraph (c)(1) of this section, where the mechanical licensing collective places any amount on hold pursuant to a dispute initiated under § 210.30(e), the mechanical licensing collective shall promptly disclose the total amount held for each disputed work (or share thereof) to the parties to the dispute, which shall include an identification of the approximate amount of royalties expected to have been distributed for each disputed work (or share thereof) in the first monthly distribution to occur after the initiation of the hold. Upon the written request of any party to the dispute, the mechanical licensing collective shall provide an update about the amount held to all parties to the dispute within a reasonable period of time, except that the mechanical licensing collective is not required to provide such an update more frequently than once every three months.

* * * * *

Dated: June 25, 2024.

Suzanne Wilson,

General Counsel and Associate Register of Copyrights.

Approved by:

Carla D. Hayden,

Librarian of Congress.

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Resolution Plans Required for Insured Depository Institutions With \$100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions With at Least \$50 Billion but Less Than \$100 Billion in Total Assets; Final Rule

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064-AF90

Resolution Plans Required for Insured Depository Institutions With \$100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions With at Least \$50 Billion but Less Than \$100 Billion in Total Assets

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting this final rule to require the submission of resolution plans by insured depository institutions (IDIs) with \$100 billion or more in total assets and informational filings by IDIs with at least \$50 billion but less than \$100 billion in total assets. The final rule modifies the current rule requirements regarding the content and timing of full resolution submissions, as well as interim supplements to those submissions provided to the FDIC, in order to support the FDIC's resolution readiness in the event of material distress and failure of these large IDIs. The final rule also enhances how the credibility of full resolution submissions will be assessed, expands expectations regarding engagement and capabilities testing, and explains expectations regarding the FDIC's review, feedback, and enforcement of IDIs' compliance with the rule.

DATES: The rule is effective October 1, 2024.

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I. Introduction

The FDIC's regulation "Resolution plans required for insured depository institutions with \$50 billion or more in total assets," issued in 2012¹ (2012 rule), requires IDIs with \$50 billion or more in total assets (CIDs) to submit resolution plans periodically. This resolution plan requirement was established to facilitate the FDIC's readiness to resolve a CIDI under the Federal Deposit Insurance Act of 1950,

as amended (FDI Act), in the event of its insolvency.

This final rulemaking to amend and restate the 2012 rule builds on the FDIC's more than a decade-long experience implementing the 2012 rule, providing guidance and feedback to CIDs, and leveraging the content of submissions for the FDIC's development of resolution strategies. Through this process, the FDIC has gained a better understanding of the challenges of resolving CIDs and the essential information needed in resolution plans and other related submissions to facilitate the FDIC's readiness in the event of a failure of one of these CIDs. Therefore, this final rule supersedes all prior guidance, including the Statement (as defined below).

Part of the challenge in resolving CIDs arises from the wide range of business models and structures among these banks. While many of the CIDs are engaged largely in traditional commercial and retail banking activities, with nearly all assets and activities conducted within the CIDI or its subsidiaries (the bank chain), others conduct significant non-banking activities. Many of the CIDs have a broker-dealer subsidiary or affiliate that provides services to bank customers. The CIDs also include banks primarily engaged in a particular business segment, such as credit card services, as well as U.S. IDIs that are part of large foreign banking organizations. There is no one-size-fits-all resolution approach for these institutions; rather, the FDIC must be prepared to execute a range of resolution options, recognizing the trade-offs among those options. The FDIC's development of resolution strategies—and its assessment of the options and trade-offs that inform them—benefit from the CIDI's knowledge of its own firm, an understanding of the CIDI's relevant capabilities, and an awareness of the impediments to executing an orderly resolution of the CIDI. Across the different CIDI business models and structures, there is a variety of factors that increases the challenges and complexity of resolution in the event of the failure of one of these large banks. Key factors include size, organizational complexity, and deposit profile, among others.

The importance of advance resolution planning was recently underscored in the failures of three large banks—all over \$100 billion in size²—in the spring

¹ 12 CFR 360.10. The 2012 rule was published as an interim final rule with an effective date of January 1, 2012, 76 FR 2011 (Sept. 11, 2011); the 2012 rule was effective April 1, 2012, 77 FR 3075 (Jan. 23, 2012).

² The failure of Washington Mutual Bank in 2008 remains the largest bank failure in U.S. history. At the time of its failure, its assets totaled approximately \$300 billion. First Republic, SVB,

of 2023: Silicon Valley Bank (SVB), Signature Bank, and First Republic Bank (First Republic).

The failures of SVB and Signature Bank on March 10 and 12, 2023, respectively, were triggered by illiquidity resulting from withdrawals by uninsured depositors at unprecedented speed and volumes. As a result of the sudden failures, there was no opportunity for pre-failure marketing. For both IDIs, the FDIC established a bridge depository institution (bridge bank) to continue bank operations post-failure to allow time to market the bank. Less than two months following those failures, First Republic was placed in receivership and sold. First Republic's failure was largely a result of contagion from the prior two failures and the bank was able to manage its liquidity for several weeks prior to failure, which allowed additional time to market the bank. The FDIC facilitated a transaction that resulted in transfer of all of the assets and liabilities to a single acquirer without establishing a bridge bank, although the FDIC stood ready to exercise the authority to form a bridge bank, if needed.

The challenges associated with the rapidity of the failures were exacerbated because the FDIC lacked important resolution planning information to facilitate marketing for SVB and Signature Bank. While SVB and First Republic had filed resolution plans just a few months before their failures, the FDIC neither had completed review nor had the opportunity to provide feedback on those plans. Signature Bank had not yet filed any resolution plan at the time of its failure; its first submission would have been due in June 2023. Current and thorough resolution planning information would have facilitated the FDIC's preparations to effectively and efficiently market the failed IDIs.

The size of an IDI can significantly impact the resolution options available to the FDIC under the FDI Act. In particular, as IDIs increase in size, the likelihood of a timely sale to a single acquirer diminishes. Currently, there are 45 CIDs, of which 33 have total assets over \$100 billion. As a group, these 45 CIDs represent approximately \$12.9 trillion in total deposits.³ While a closing weekend sale may be an option in some cases, its availability cannot be assumed in view of the size, complexity, and potential speed of failure of a CID. This is particularly true for the largest

CIDs with \$100 billion or more in total assets because the pool of potential acquirers for these institutions is limited, and any possible transaction would be complex. While there is a larger pool of possible acquiring institutions for CIDs in the \$50 to \$100 billion total asset range, some of these institutions engage in highly complex activities and pose similar levels of operational complexity as those over \$100 billion in total assets.

The CIDs also tend to have a more significant proportion of uninsured deposits as compared to smaller banks. In the aggregate, more than 43.4 percent of deposits of IDIs with over \$50 billion in total assets are uninsured.⁴ Under the FDI Act, any transaction using FDIC assistance—including where assistance is provided in connection with the establishment of a bridge bank—must meet the least-cost test, absent a systemic risk exception. Under the least-cost test, the cost to the deposit insurance fund (DIF) resulting from any resolution needs to be less than the cost to the DIF than all other alternatives. Where the proportion of insured deposits is very low, the potential cost to the DIF of a resolution in which only insured deposits are protected is more likely to be less costly than a resolution in which all deposits are protected.

These and other characteristics of large banks add to resolution challenges and increase the importance of robust and ongoing resolution planning for the CIDs. The content of the full resolution submissions under this final rule will support planning for strategic options, including use of a bridge bank, and is important to the FDIC's readiness to resolve these banks.

A. Background

Since issuing the 2012 rule, the FDIC has provided guidance and feedback to CIDs to assist in development of their resolution plans.

In 2014, following the first submissions, the FDIC provided guidance and direction for the preparation of subsequent CID resolution plans with a focus on the discussion of failure scenario, resolution strategies, least-cost analysis, and identified obstacles. In addition, following each resolution plan submission cycle, the FDIC issued feedback letters to CIDs with information for the subsequent plan submission.

After several plan submission cycles, in 2018, the FDIC instituted a moratorium on the 2012 rule's requirements for all CIDs pending

completion of a new rulemaking. At the time the moratorium was adopted, the FDIC also published an advance notice of proposed rulemaking (ANPR),⁵ which requested comment on how to tailor and improve the 2012 rule, including how to reduce the burden associated with the least-cost test analysis and whether requirements should be tiered based on size or complexity factors of cohorts of CIDs. The ANPR also requested comment on potential enhancement of engagement and capabilities testing. At that time, the FDIC extended the due date for future plan submissions pending completion of the rulemaking process.

Following the issuance of the ANPR, the FDIC continued to develop its thinking regarding resolution planning for large IDIs, including how to maximize the FDIC's resolution readiness. In 2020 and 2021, the FDIC undertook targeted engagement with select CIDs on their 2018 plan submissions, a step consistent with the enhanced emphasis on engagement and capabilities testing envisioned under the ANPR.

In January 2021, the FDIC Board took action to lift the moratorium on the resolution plan requirement for CIDs with \$100 billion or more in assets and, in June 2021, the FDIC issued a policy statement (Statement)⁶ to describe how it planned to implement certain aspects of the 2012 rule. The Statement superseded all prior guidance and feedback. For CIDs with total assets of at least \$50 billion and less than \$100 billion, the moratorium on submission of resolution plans remained in effect. CIDs with \$100 billion or more in total assets submitted resolution plans in accordance with a schedule established by the FDIC from December 1, 2022 through December 1, 2023. Consistent with the Statement, each of these CIDs received exemptions from certain content requirements under the 2012 rule and could submit streamlined resolution plans for review.

On September 19, 2023, the FDIC published for comment a Notice of Proposed Rulemaking, "Resolution Plans Required for Insured Depository Institutions with \$100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions with At Least \$50 Billion but Less Than \$100 Billion in Total Assets" (NPR).⁷ The FDIC received and

and Signature Bank, respectively, were the second, third, and fourth largest bank failures in history.

³ FDIC Consolidated Reports of Condition and Income data as of March 31, 2024.

⁴ *Id.*

⁵ 84 FR 16620 (April 22, 2019).

⁶ Statement on Resolution Plans for Insured Depository Institutions (June 25, 2021), <https://www.fdic.gov/resources/resolutions/resolution-authority/idi-statement-06-25-2021.pdf>.

⁷ 88 FR 64579 (Sept. 19, 2023).

considered 12 comment letters, which are discussed below.⁸

In addition to enacting and implementing the 2012 rule, the FDIC has instituted several rulemakings that support its mission as deposit insurer to make timely insured deposit payments and to resolve a failed IDI in the manner that is least costly to the DIF. These separate rulemakings address certain difficulties the FDIC could face in the closing of a large, complex IDI, and include *Recordkeeping for Timely Deposit Insurance Determination* (part 370) and *Recordkeeping Requirements for Qualified Financial Contracts* (part 371).⁹ Part 370 requires covered institutions, namely IDIs with two million or more deposit accounts, to put in place mechanisms to facilitate prompt deposit insurance determinations. Part 371 requires IDIs in a troubled condition to keep detailed records in a specified, standard format regarding their qualified financial contracts. This information would be used by the FDIC, were it appointed receiver, in making a determination of which qualified financial contracts entered into by the failed institution (if any) will be transferred within the brief statutory window.

Separate from the FDI Act and this rule's requirements, section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (Dodd-Frank Act),¹⁰ and the related joint rulemaking published by the Board of Governors of the Federal Reserve System (FRB) and the FDIC in November 2019 (DFA rule)¹¹ mandate that certain bank holding companies and nonbank financial companies (covered companies) submit resolution plans (DFA resolution plans) for the rapid and orderly resolution of the covered company under the U.S. Bankruptcy Code.

There are some noteworthy differences between the DFA rule requirements and this rule. First of all, Section 165(d) of the Dodd-Frank Act and the DFA rule focus on resolution of the organization by the organization itself under the U.S. Bankruptcy Code or other ordinary resolution regime. While some DFA resolution plans utilize a strategy where the IDI is resolved under the FDI Act, they must address resolution of the organization as a whole, including the holding company and non-bank affiliates. In addition, the

statutory purpose of a DFA resolution plan is to reduce the likelihood that the financial distress or failure of a covered company would have serious adverse effects on financial stability in the United States by requiring covered companies to submit plans for rapid and orderly resolution without any assumptions of reliance on public support. By contrast, this rule focuses only on the CIDI itself, and the strategic analysis and information needed to support a resolution using the FDIC's traditional resolution tools under the FDI Act.

Presently, all U.S. global systemically important banking organizations¹² (U.S. GSIBs), which are the largest and most systemic and interconnected banking organizations in the United States, have developed DFA resolution plans that use a single-point-of-entry (SPOE) strategy. Under an SPOE strategy, the top tier holding company is placed into bankruptcy and generally all material operating subsidiaries, including any IDIs in the group, remain open and operating. In an SPOE resolution, the FDIC would not be called upon to resolve the IDI under the FDI Act. The SPOE approach may minimize disruption and preserve franchise value, as well as reduce systemic risk, particularly in a firm with a complex structure that includes multiple material operating entities outside of the bank chain. In contrast, most other banking organizations subject to the DFA resolution plan submission requirements currently utilize a strategy in which the top tier holding company is placed into bankruptcy and the IDI is resolved under the FDI Act.

Firms that have submitted DFA resolution plans adopting an SPOE strategy must have or develop the capabilities and may need to make improvements to their organizational structures to support implementation of that strategy. However, the FDIC still must be prepared to use its resolution authorities if necessary to achieve an orderly resolution of the firm, including its authority to resolve a CIDI under the FDI Act, or, if necessary, the extraordinary backup orderly resolution authorities provided in Title II of the Dodd-Frank Act.

A resolution using Title II orderly liquidation authorities, which supports a group-wide SPOE approach, is a backup authority to be used, if necessary, to resolve a financial company whose resolution under the Bankruptcy Code would have serious

adverse effects on U.S. financial stability. That extraordinary authority may not be called upon to resolve the firm, however, if the resolution of the IDI under the FDI Act would avoid the serious adverse effects of the firm's failure. By the same token, a resolution under the FDI Act is particularly likely for large regional banks with less significant non-bank activities, predominately domestic operations, and few or no systemically important identified critical operations.

The requirements of the DFA rule and this rule support their respective differing purposes; at the same time, both rules serve the broader objective of facilitating orderly resolutions. Consistent with the proposal, this final rule specifically allows the incorporation of information from an affiliate's DFA resolution plan into a CIDI's full resolution submission or interim supplement. In providing feedback or making determinations with respect to any submission under this final rule, the FDIC will consider feedback and determinations provided with respect to DFA resolution plans with similar content, to promote consistency across the two planning requirements, and, where appropriate, taking into account the differences in the requirements of the two rules and the approaches to resolution strategy and regime.

B. Overview of the Proposed Rule

The proposal provided for two distinct groups of CIDs based on size, with differing obligations for each group. The first group comprised those IDIs with \$100 billion or more in total assets (group A CIDs). The proposed rule would have required group A CIDs to submit full resolution plans containing an identified strategy appropriate to the CIDI for its orderly and efficient resolution, as well as providing all other content elements described in the proposed rule.

The second group comprised those IDIs with at least \$50 billion but less than \$100 billion in total assets (group B CIDs). The proposed rule would have required full resolution submissions from group B CIDs with more limited requirements, in the form of an informational filing.

The proposal was intended to:

- Clarify and enhance requirements applicable to IDIs with \$50 billion or more in total assets, including resolution plans submitted by group A CIDs and informational filings submitted by group B CIDs;
- Require each group A CIDI to provide an identified strategy for resolution that ensures timely access to

⁸ FDIC staff also met with staff of two commenters.

⁹ Codified at 12 CFR part 370 and 12 CFR part 371, respectively.

¹⁰ 12 U.S.C. 5365(d).

¹¹ 84 FR 59194 (Nov. 1, 2019), codified at 12 CFR 381 (FDIC) and 243 (FRB).

¹² As defined by rules promulgated by the FRB, see 12 CFR 217.402 (Identification as a global systemically important BHC).

insured deposits, maximizes value from the sale or disposition of assets, minimizes any losses realized by creditors of the group A CIDI in resolution, and addresses potential risks of adverse effects on U.S. economic conditions or financial stability;

- Clarify requirements with respect to the assumptions for the failure scenario used by group A CIDs in resolution plans and reserve the ability of the FDIC to provide additional parameters for the failure scenario for all group A CIDs or specific individual group A CIDs in future plan submission cycles;

- Strengthen full resolution submission content elements and associated requirements regarding capabilities to support optionality available to the FDIC and ensure that the FDIC's development of resolution strategies reflects considerations related to the characteristics of the individual CIDI and potential challenges that could be faced in resolution;

- Refine the requirements for group A CIDs with respect to least-cost analysis and focus on ensuring that the FDIC has the building blocks and capabilities it needs to undertake the least-cost test in resolution in the event of failure of a group A CIDI;

- Establish an enhanced credibility standard for full resolution submissions and clarify the process for review and feedback to identify and address weaknesses in full resolution submissions and enforce the rule;

- Establish a requirement for informational filings to be submitted by group B CIDs that is focused on information most important and appropriate for resolution of those CIDs;

- Adjust the frequency of full resolution submissions to a two-year cycle for all CIDs to accommodate engagement and capabilities testing as part of the resolution planning process, and establish periodic interim supplements containing specified resolution submission content items; and

- Codify certain aspects of guidance and feedback previously issued to IDIs subject to the 2012 rule.

II. Overview of Comments

The FDIC received 12 comment letters to the proposal from banking organizations, industry and trade groups representing the banking and financial services industry, a law firm, and consumer groups.

The comments received generally were responsive to questions posed by the FDIC in the NPR. The majority of commenters suggested changes to reduce the costs of submission

preparation for filers, including by adjusting the proposed submission cycle, narrowing the proposed scope and content requirements, and enhancing alignment with relevant resolution planning requirements of the DFA rule. Several commenters raised concerns about the enhanced credibility standard, and asked for greater clarity on engagement and capability testing. Three commenters offered broad support for the proposed rule as written. The comments received are summarized below.

Scope of Rule

Most commenters agreed with the overall scope of the rule. Two commenters suggested creating a new group of filers that would include only firms with \$100 billion to \$250 billion in total assets, and reducing requirements for that new group, as compared to the CIDs with at least \$250 billion in total assets. As for group B CIDs, several commenters noted the content requirements of the informational filings varied in a limited manner from a full resolution plan and asserted that the FDIC should more significantly reduce the burden for group B CIDs with further tailoring or elimination of requirements for group B CIDs. Two other commenters recommended that group B CIDs should be subject to the same requirements as group A CIDs.

Several commenters addressed the relationship between IDI resolution plans and DFA resolution plans. Two commenters supported changes to better harmonize these resolution planning efforts. One commenter suggested CIDs with parent banking organizations that are biennial filers or triennial full filers of DFA resolution plans should be exempted from IDI resolution plan requirements. That commenter also argued for streamlining requirements if IDI resolution plans continue to be required for CIDs in addition to the DFA resolution plans required of their parent banking organizations. Regarding consistency across these two programs, two commenters emphasized the need to use consistent definitions with regard to IDI resolution plans and DFA resolution plans, and cited the definition of “material change” as an example where there could be better alignment. Another commenter highlighted that the scope of the virtual data room capabilities requirement should be aligned with the equivalent requirement for DFA resolution plans. Additionally, two commenters emphasized the importance of consistency between credibility determinations on DFA resolution plans

by the FDIC and FRB, and on IDI resolution plans by the FDIC, as well as any other feedback on common elements of these two submissions.

Submission Cycle and Transition Period

Two commenters broadly supported the cycle as proposed, while four argued to reduce the frequency of full resolution submissions. Commenters arguing for a longer submission cycle generally supported a three-year cycle, which they noted would take into account the cycle for certain DFA resolution plans, allow for adequate review and feedback by FDIC staff, and provide time for CIDs to incorporate that feedback. However, one commenter noted that a two-year cycle with no interim supplements could be appropriate for CIDs whose parent companies are biennial filers of DFA resolution plans. In terms of the dates of submissions, one commenter suggested July, while two others proposed December.

With respect to the first full resolution submissions or interim supplements following the effective date of the final rule, five commenters suggested a period of 12 months or longer, rather than the proposed 270-day period. In particular, with respect to group B CIDs, commenters suggested a transition period of 18 months, since none of these CIDs has submitted a resolution plan under the 2012 rule since implementation of the moratorium.

Regarding the interim supplements, three commenters recommended narrowing the scope of information required. Commenters recommended reducing or eliminating requirements for narrative or description, and to limit the required content to information that has materially changed. Another commenter suggested that narrative commentary in the interim supplement should be limited to a summary of material changes in the information provided in the prior full resolution submission. One commenter suggested that interim supplements, like full resolution submissions, should use data as of the end of the prior year, rather than the prior quarter.

Several commenters emphasized the importance of the FDIC providing meaningful feedback to CIDs and adequate time for that feedback to be incorporated into subsequent submissions, with one commenter recommending feedback be provided at least 12 months before the next submission is due and two others noting the need for the FDIC to build internal capacity and capabilities to support this.

Rule Requirements

Commenters generally supported the FDIC's focus on increasing optionality available to it in preparing for resolution. Four agreed that a bridge bank may be helpful in this respect, to provide more time to sell all or parts of the institution, reduce reliance on strategies involving a single buyer, and expand the universe of potential acquirers. Two commenters supported the identified strategy requirement as proposed, with one noting it would be among the most critical pieces of information in a resolution plan and plans without this element would not likely be credible or effective. Three other commenters favored elimination or modification of the scenario and identified strategy requirement. One of these commenters suggested that some CIDs with more than \$100 billion but less than \$250 billion in total assets may have less complex structures that make an FDIC-arranged sale feasible. They noted that, by requiring just one identified strategy, the proposal restricts CIDs from presenting a full range of options for resolution. Another commenter argued that, based on the lessons learned from recent failures, the FDIC should be more focused on maximizing the likelihood of a resolution weekend sale, including by emphasizing real-time capability for IDs to produce necessary information for potential buyers. A third commenter expressed concern that the proposed requirement for the identified strategy to have "meaningful optionality" is too vague.

Two commenters addressed aspects of assumptions in the proposed failure scenario, with one arguing against the assumption that the CID's parent holding company enters bankruptcy, and the other supporting the assumption of continued Federal Home Loan Bank lending to a bridge bank.

Regarding the proposed approach to valuation to facilitate the FDIC's assessment of least-costly resolution method, three commenters emphasized the importance of valuation to resolution planning and another expressed support for replacing the least-cost test requirement of the 2012 rule with the proposed valuation requirement. Three commenters suggested modifications to the approach; specifically, these commenters favored elimination of the requirement for quantitative valuation analysis. These commenters argued that such analysis would be overly burdensome, more expensive for CIDs that do not maintain in-house expertise,

and of little value to the FDIC in an actual resolution scenario.

Engagement and Capabilities Testing

Commenters were generally supportive of engagement and capabilities testing. One commenter suggested increasing the expected frequency of engagement, while another advocated for committing more resources toward engagement and capabilities testing while decreasing the emphasis on full resolution submission documentation. Four commenters suggested that the FDIC should provide advance notice of the timing for engagement and capabilities testing, and the process for the testing and feedback. Two of these commenters indicated the FDIC should provide CIDs with a comprehensive list of capabilities it expects a CID to maintain, and suggested this should be done through a notice and comment period to enable input from the industry. One of these commenters also noted that CIDs—especially, group B CIDs—will need time to build, improve, and test capabilities prior to undergoing capabilities testing with the FDIC, and suggested capabilities testing should not occur during a CID's initial submission cycle under this Rule.

Credibility Standard

Two commenters expressed support for the proposed enhancement of the credibility standard. Three other commenters recommended eliminating the credibility determination, granting CIDs latitude on the standard's application, or foregoing any enforcement action based on a credibility determination. They argued that the standard, particularly the first prong, is subjective and susceptible to being applied inconsistently over time. Another commenter observed that any credibility standard is necessarily subjective.

Several commenters emphasized the importance of a collaborative approach to resolution planning, with one emphasizing the role communications can play to support this, including related to the timing and scope of capabilities testing. In addition, several commenters expressed concerns about any enforcement actions related to engagement and capabilities testing, with one commenter stressing that full resolution submissions should only be deemed non-credible due to fundamental resolvability issues and not because of issues with CIDs' resolution capabilities that fall short.

Expected Effects

One commenter indicated that the proposal would substantially add to the time and resources required to prepare IDI resolution plans. Another two commenters argued that the analysis of the compliance burden understates the true cost of the burden. A fourth commenter suggested that the estimated time required to develop an IDI full resolution submission is not unreasonable and the cost of compliance would pale in comparison to the costs of potential bank failures and banking crises.

III. Final Rule

The FDIC considered all comments received and has adopted certain changes to the proposed rule as discussed below. In addition, the FDIC made certain technical, non-substantive changes throughout, including corrections to paragraph numbering and grammar, improving word choice for readability, and eliminating redundancy.

A. Scope and Purpose

The scope and purpose of the final rule are substantively unchanged from the proposal. This rule is intended to ensure that each group A CID develops a credible strategy to facilitate the FDIC's resolution of the institution across a range of possible scenarios and, with respect to each group A CID and each group B CID, that the FDIC has access to all of the material information and analysis it needs to efficiently resolve the CID in the event of its failure.

Consistent with the 2012 rule and the proposal, the final rule applies to all IDs with at least \$50 billion in total assets based upon the average total assets reported over the previous four quarters. Like the proposal, the final rule will differentiate the requirements pertaining to group A CIDs and group B CIDs. Each group A CID is required to periodically submit a resolution plan to the FDIC, including an identified strategy for its resolution under the specified failure scenario. Each group B CID is required to periodically submit an informational filing to the FDIC that would consist of certain informational content, but would not be required to include an identified strategy or to develop capabilities necessary to support least-cost test analysis.

Comments received by the FDIC included letters from two commenters who recommended that group B CIDs should file resolution plans with no distinction between group A CIDs and

group B CIDs. Two other comment letters suggested that group A CIDs should consist only of CIDs with at least \$250 billion in total assets and that there should be further tiering of requirements for CIDs between \$100–250 billion in total assets and those between \$50–\$100 billion in total assets. One commenter recommended that group B CIDs not be required to make any full resolution submissions.

The FDIC has retained the distinction between group A CIDs and group B CIDs, and the requirement that group B CIDs provide informational filings. The FDIC believes that the approach taken for group B CIDs appropriately recognizes the additional complexity and greater resolution challenges applicable to the group A CIDs. The threshold of \$100 billion in total assets, which is also used in the Dodd-Frank Act¹³ and other rulemakings as a basis for assessing a banking organization's financial stability and safety and soundness risks,¹⁴ is an appropriate threshold to distinguish full resolution submission requirements for group A CIDs and group B CIDs, and is retained in the final rule.

While all group A CIDs have the same requirements for submission of full resolution plans, in response to comments discussed further below, the group A CIDs are further divided into two filing categories: triennial and biennial filers. While most group A CIDs will file on a triennial cycle under the final rule, those CIDs that are part of the largest and most systemic and interconnected U.S. banking organizations—those affiliated with U.S. GSIBs—will file biennially.

The FDIC considered comments proposing specific changes to the content of informational filings for group B CIDs, which are addressed below.

B. Definitions

The proposal included definitions of terms used in the proposed rule, which are included without change in the final rule, except as noted below.

Several comments were received with respect to certain defined terms. Two commenters emphasized the importance of consistency in the definitions of equivalent terms between the proposed rule and the DFA rule, and “core business line” and “material change” were cited as specific examples.

Additionally, two comment letters argued that the proposed definition of “material change” was overly inclusive and used in a manner that might result in triggering the notice requirements contained in the proposal upon relatively minor events, noting a narrower approach to events triggering such a notice in the DFA rule.

Accordingly, the definitions for “core business lines” and “material change” are revised in the final rule to be more consistent with similar concepts in the DFA rule. The definition of “core business lines” is revised to conform more closely to the DFA rule. The definition covers the CIDI's business lines whose failure would result in a material loss of the CIDI's revenue, profit, or franchise value.

The definition of “material change” is revised to combine concepts from the definition in the proposed rule and from the definition in the DFA rule. As discussed in the preamble to the proposed rule, in administering the 2012 rule, the FDIC has observed that not all CIDs have interpreted the material change concept similarly. Accordingly, the intent of revising the defined term is to use an approach similar to the DFA rule, while improving clarity as to how to apply the concept in the context of this rule. Given differences in the purpose and scope of the two rules, the final rule focuses on changes that are important for CIDs. Thus, the definition of material change in the final rule focuses on events that relate to the requirements of the rule, such as changes to overall deposit structure, identification or de-identification of a franchise component, and acquisition or disposition of a material asset portfolio, among other things. The usage of the term “material change” was modified as well, to be more consistent with the approach taken under the DFA rule. As discussed below, the final rule uses the phrase “extraordinary event,” borrowed from the DFA rule, in the context of the notice requirement instead of the term “material change.”

One commenter noted that the proposed definition of “material entity” is over-inclusive, which might be inconsistent with the goal of focusing on the material aspects of the organization, and noted that this approach diverges from the approach taken in the DFA rule. The FDIC agrees with the comment that including all entities that are material to franchise components may result in relatively insignificant entities being captured within the definition. Accordingly, the reference to franchise components is omitted from the definition in the final rule. However,

including all IDIs as material entities, regardless of size, is important for FDIC's resolution planning, as it is likely that all may enter resolution under the FDI Act, due to statutory cross-guarantees. No change is being made to the inclusion of all IDIs as material entities.

In the definition of “franchise component,” the term “asset pool” was replaced by the term “material asset portfolio” to utilize a defined term from the rule. A similar change was made to the definition of “multiple acquirer exit” in using the defined term “material asset portfolios” instead of “asset portfolios.”

Throughout the final rule, the term “resolution submission” was replaced by the term “full resolution submission” and the term “BDI” was replaced by the term “bridge depository institution” for clarity.

The definitions of “group A CIDI” and “group B CIDI” were revised to be more consistent with the approach used in the DFA rule for determining filing groups.

The definition of United States was revised to be consistent with the definition under the FDI Act.

New defined terms were added for clarity, including “PCS service provider,” “DIF,” “biennial filer,” and “triennial filer.”

C. Full Resolution Submissions Required

Biennial Filers and Triennial Filers

Under the proposal, each CIDI would have been required to provide a full resolution submission to the FDIC every two years. The FDIC would have retained the discretion to alter the submission dates upon written notice to the CIDI. An interim supplement would have been required in any year in which the CIDI is not required to file a full resolution submission.

Four commenters recommended a three-year submission cycle consistent with the Statement. Commenters supporting the three-year cycle emphasized the importance of receiving timely feedback and having sufficient time to incorporate improvements in the full resolution submissions with each cycle. These commenters also cited an increased cost in more frequent filings. Commenters flagged the importance of the coordination of filing resolution submissions, submission review, and engagement and capabilities testing, as well as filing interim supplements over the course of the cycle. Two commenters supported the proposed biennial submission. One commenter recommended that if the FDIC were to

¹³ See 12 U.S.C. 5365(a)(2)(C). The threshold for enhanced prudential standards under that provision was established through passage of the Economic Growth, Regulatory Relief, and Consumer Protection Act in 2018.

¹⁴ See, e.g., 84 FR 59230 (Nov. 1, 2019) (codified at 12 CFR parts 3, 50, 217, 249, 324, 329).

move to a triennial submission cycle for most CIDs, the biennial cycle should be retained for the CIDI affiliates of U.S. GSIBs, which are biennial filers under the DFA rule. The commenter suggested that this approach would be more efficient for the U.S. GSIBs and for the FDIC, as interim supplements would not be necessary because either a DFA resolution plan or a resolution plan under this rule would be submitted in alternating years.

The final rule adopts the recommended three-year submission cycle for most CIDs. The FDIC agrees with commenters that timely and fulsome feedback for each CIDI is an important priority, and ensuring time for engagement and capabilities testing between full resolution submissions is of significant value. In addition, the FDIC expects that key components of the full resolution submission will remain relatively constant over a three-year cycle, including the identified strategy for group A CIDs. Important information that is more likely to change over that period will be updated annually through the interim supplement. In addition, the FDIC will receive notices of extraordinary events that will provide information of significant changes at the CIDI, such as through merger and acquisition or divestiture, and the FDIC would be in a position to request additional information if needed.

With respect to the CIDI affiliates of U.S. GSIBs, the FDIC agrees with the commenter that a full resolution submission cycle that is complimentary with the DFA resolution plan cycle will improve efficiency, and will ensure timeliness of content needed for contingency planning for an FDI Act resolution. The biennial filing is appropriate for these CIDs, which are part of the largest and most systemic and interconnected U.S. banking organizations. Accordingly, the final rule establishes a two-year cycle for CIDs that are affiliates of U.S. GSIBs. Consistent with the proposal, the FDIC retains the discretion to change filing dates for any CIDI.

The FDIC received several comments with respect to the preferred submission date. One commenter suggested July 1, while two commenters recommended December dates. One of these commenters suggested that CIDs with parent banking organizations that are triennial filers of DFA resolution plans should submit full resolution submissions under this rule in December of the same year in which the DFA resolution plan is filed. The final rule does not specify a calendar date for submissions, to retain flexibility over

the life of the rule. While July 1, January 1, and December 1 dates have been used in the past, the most suitable dates may be different for different cohorts of CIDs and may change over time. The FDIC considers the annual cadence for information required by this rule to be provided by most CIDs, including those with parent banking organizations that are triennial filers of DFA resolution plans—whether via full resolution submissions or interim supplements—to be appropriate from a resolution planning workflow perspective for both the FDIC and CIDs. The FDIC also expects to establish a regular cadence of review, testing, and engagement across two cohorts of group B CIDs, and may establish different calendar dates for submissions by those group B CIDI cohorts.

With respect to the first full resolution submissions or interim supplements following the effective date of the final rule, five commenters suggested a period of 12 months or longer, rather than the proposed 270-day period. In particular, with respect to group B CIDs, commenters suggested a transition period of 18 months, since none of these CIDs have submitted a resolution plan under the 2012 rule since implementation of the moratorium.

The FDIC will notify CIDs of the date when their first full resolution submissions or interim supplements are due under the final rule. Consistent with the proposal, for group A CIDs, that date will be at least 270 days from the effective date of the rule. The FDIC believes that 270 days following the effective date is sufficient time for group A CIDs to prepare a resolution plan or interim supplement that conforms to the final rule. This timing reflects the urgency of resolution planning for these largest CIDs, and supports the establishment of a regular cadence of full resolution submissions and interim supplements across three cohorts of group A CIDs for purposes of full resolution submission review, horizontal capabilities testing, and firm-specific engagement. The text of the final rule will be publicly available following action by the FDIC Board of Directors, and will be published in the **Federal Register** well before the effective date, giving CIDs notice of the final rule's requirements.

For group B CIDs, the initial submission due dates will be at least one year from the effective date of the final rule. This is appropriate because the group B CIDs are generally new to the resolution planning process—or have not filed for an extended period due to the moratorium—and because the

resolution challenges associated with the group B CIDs are somewhat reduced.

Full Resolution Submissions by New CIDs

Consistent with the proposal, the final rule indicates that an IDI that becomes a CIDI after the effective date of the final rule is required to provide its initial full resolution submission on or before the date specified in writing by the FDIC, which will be no earlier than 270 days after the IDI became a CIDI. As these firms are aware of such transition well in advance, 270 days after the change of status is an appropriate length of time to submit a new full resolution submission. As IDIs grow, whether through merger or business strategy or otherwise, it is important that the FDIC receive prompt and timely information for resolution planning. The 270-day period balances the urgency of resolution readiness against the time needed for a new CIDI to complete a thorough and responsive full resolution submission.

The final rule adds language to address submissions subsequent to a CIDI transitioning between groups. A CIDI that transitions from group B to group A or from group A to group B, will file a full resolution submission or interim supplement, as applicable, pursuant to the requirements relevant to its new filing group on or before the date that its next full resolution submission or interim supplement is due, unless it receives written notice of a different date from the FDIC.

The final rule contains language changes from the proposal for clarity and consistency by providing for full resolution submissions on or before the submission date, rather than on the submission date, for the biennial filers, the triennial filers, and the new filers. This is consistent with similar language in the DFA rule.

Notice of Extraordinary Event

The proposal would have required that a CIDI provide the FDIC with a notice and explanation of a material change no later than 45 days after certain events included in the proposed definition of “material change.” The proposal also would have allowed for an exemption from this requirement if the date on which the CIDI would be required to submit the notice would be within 90 days before the date on which the CIDI is required to provide a full resolution submission.

Commenters suggested that the definition of material change was too broad and would give rise to notices that were not likely to significantly

impact the full resolution submission. Commenters suggested consideration of the approach taken in the DFA rule, which requires notice of a more limited set of “extraordinary events.” The FDIC considered those comments and adopted the concept of an “extraordinary event” as the basis for the 45-day notice, rather than a “material change.” The term “material change” remains in the final rule, but is no longer part of the notice requirement. This is similar to the approach taken for DFA resolution plans, with appropriate adjustments for the differences in the two rules. The FDIC expects that this approach will provide a focus on the events that are significant enough to warrant a notice, such as a merger, acquisition or disposition of assets, or fundamental change to the CIDI’s organizational structure, core business lines, size, or complexity. The final rule retains the requirement of the notice within 45 days of the event, and the exemption from the requirement if the event occurs within 90 days of the date by which the next full resolution submission is due. The impact of the extraordinary event on resolution would be discussed in the discussion of material changes in the next submission, whether a full resolution submission or the interim supplement, and the FDIC would be in a position to request additional information if needed. A CIDI is not exempt from the requirement if the event occurs within 90 days of the date by which the next interim supplement is due because of the more limited content required in an interim supplement.

Approval by the CIDI Board of Directors

The final rule adopts without change the requirement that a CIDI’s board of directors approve the full resolution submission, and that this approval be noted in the board’s minutes. For an insured branch, the final rule allows a submission to be approved by a delegee acting under the express authority of the board, and requires such delegation of authority to be noted in the board’s minutes. No comments were received on this proposed provision. This requirement does not apply to an interim supplement.

Incorporation From Other Sources

The proposal would have allowed the CIDI to incorporate certain information or analysis without seeking the authorization required under 12 CFR part 309 for disclosure of FDIC confidential information. The proposed rule included certain proposed requirements about the format and process for incorporation of information

from other sources and would have required certification that the information or analysis remains accurate in all respects that are material to the CIDI’s full resolution submission. The FDIC received no comments on this proposed provision and there were no substantive changes. However, the final rule has been modified from the proposal for consistency and clarity to state that a CIDI may incorporate information from other sources into its interim supplement and the “confidential section” of the full resolution submission and to allow information from a regulatory filing of a CIDI affiliate without seeking a separate waiver.

D. Content of the Full Resolution Submissions for CIDs

The proposal would have required each group A CIDI to submit a resolution plan that includes all content specified in § 360.10(d) of the proposed rule. The proposal would have required each group B CIDI to provide an informational filing, which would not include all of the content of a resolution plan. As proposed, the informational filing would not include the executive summary, identified strategy and failure scenario, or valuation to support least-cost test analysis content elements that are applicable to group A CIDI resolution plans.

The FDIC received comments related to the content elements that would apply to an informational filing. Two commenters suggested that the requirement to describe franchise components be reduced or removed for group B CIDs, because, the commenters argued, the proposed franchise component content element included information similar to resolution planning that should not be required in an informational filing. While the FDIC continues to believe that the identification of franchise components is critical for resolution preparation, particularly in situations where a whole bank sale may be difficult to achieve, the FDIC also agrees that some proposed aspects of the franchise components content element may inadvertently require discussion of resolution strategy by group B CIDs. Accordingly, in response to these comments, the final rule exempts group B CIDs from reporting the portions of the franchise component content element relating to marketing process and capabilities, key assumptions underpinning each divestiture, and obstacles to execution. All other proposed subparts of the franchise component content element are required for group B CIDs in the final rule.

Commenters also recommended the reduction, removal, or amendment of several other content elements for informational filings. Some commenters generally suggested changes to content elements that they viewed as requiring information that they did not believe to be as relevant or applicable for group B CIDs as for group A CIDs or to be available from other sources aside from the group B CIDs, while one commenter was generally supportive of the proposed content element requirements. After reviewing these comments, the proposed content element requirements, the availability of the information for the proposed content elements, and the FDIC’s resolution practices and experience, the FDIC has determined that all other informational filing content elements should be maintained as proposed. The content elements will provide critical information at a level of detail necessary for resolution planning and execution that, in the FDIC’s estimation and experience, is not available in sufficient detail from other sources to meet the FDIC’s needs in the resolution context.

Under the final rule, a full resolution submission, whether a resolution plan for a group A CIDI, or an informational filing for a group B CIDI, must include a discussion of any material changes from the prior full resolution submission or interim supplement or an affirmation that no material change has occurred, and a discussion of changes to the CIDI’s previous full resolution submission resulting from any change in law or regulation, guidance, or feedback from the FDIC. This requirement was proposed as part of the executive summary of the resolution plans submitted by the group A CIDs, and while the group B CIDs do not need to include an executive summary as part of their informational filings, the final rule requires that the information filing include a similar discussion of changes since the prior submission. As discussed above, the definition of material change has been modified in the final rule in response to comments, providing additional context to this requirement.

The FDIC considered all comments related to the specific requirements of the content elements described in § 360.10(d) of the proposed rule and discusses these content elements below.

Identified Strategy

The proposal would have required each group A CIDI to provide an identified strategy, which describes the resolution from the point of failure through the sale or disposition of the group A CIDI’s franchise (including all

of its core business lines and all other business segments, branches, and assets that constitute the CIDI and its businesses as a whole) in a manner that meets the credibility standard. The proposal would have established the bridge bank approach as the default identified strategy, and indicated that a bridge bank strategy must provide for the establishment and stabilization of a bridge bank and an exit strategy from the bridge bank.

Recognizing that the bridge bank approach may not be optimal for all group A CIDs, the proposal would have permitted a different identified strategy if that different strategy best addressed the first prong of the credibility criteria, could reasonably be executed by the FDIC across a range of likely failure scenarios, and would be more appropriate for the size, complexity, and risk profile of the specific group A CIDI. However, the proposed rule would not have permitted the identified strategy to be based upon the sale of substantially all assets and liabilities over closing weekend. The proposal would have required that any identified strategy include meaningful optionality for execution across a range of failure scenarios.

Two commenters recommended eliminating the requirement of a failure scenario-based identified strategy in any resolution plan. In addition, one comment letter suggested that this requirement should be based on factors other than size, such as whether more than 90 percent of the total consolidated assets are within the CIDI, the extent of cross-border activity, or the IDI's role as a financial utility or agent bank. Two commenters supported the proposed scope of the requirement; one commenter suggested that it should apply to group B CIDs as well.

Two commenters supported the identified strategy requirement as proposed, with one noting it would be among the most critical pieces of information in a resolution plan and plans without this element would not likely be credible or effective. Three other commenters favored elimination or modification of the failure scenario and identified strategy requirement. Several commenters supported the proposed rule's emphasis on a bridge bank approach as the default identified strategy. Two commenters recommended including a whole bank sale as a permitted identified strategy for group A CIDs, suggesting that it is a possible option even for large banks, and its use may minimize losses to the DIF and other creditors.

The FDIC considered the comments and concludes that there are certainly

factors other than size that impact challenges in resolution and availability and likelihood of a closing weekend sale as a strategic option, however, the FDIC considers that size alone may present significant challenges and make a closing weekend sale less likely. While the FDIC will consider any feasible bid for the sale of the IDI franchise over closing weekend or as promptly as possible post-failure, it cannot rely on that option, and must have available other strategic options. As explained in the preamble to the proposal, the proposed requirements related to the identified strategy and failure scenario are intended to provide the FDIC with a strategic option that is adaptable under a wide range of potential scenarios, as the actual scenario is likely to be materially different from any hypothetical scenario construct. Further, the development of an identified strategy that takes into account a group A CIDI's organization, structure, business lines, and other characteristics provides significant insight into the obstacles that the FDIC might face in resolving the CIDI and possible mitigating actions that may be available to address those obstacles. Accordingly, the final rule retains the requirement that group A CIDs develop an identified strategy based on a failure scenario.

In addition, the final rule adopts the approach taken in the proposal with respect to the strategic options to be considered in each group A CIDI's identified strategy. The strategic option that the FDIC considers most useful for the group A CIDs across the widest range of failure scenarios is the establishment of a bridge bank that can continue the operations of the CIDI. Generally, a bridge bank approach will support the preservation of franchise value and will also allow time for restructuring and marketing to facilitate the sale or disposition of the business lines and related assets, while providing insured depositors with prompt access to their accounts.

Accordingly, the final rule establishes the bridge bank approach as the default identified strategy. A bridge bank strategy must provide for the establishment and stabilization of a bridge bank and an exit strategy from the bridge bank, such as a multiple acquirer exit involving the regional breakup of the group A CIDI or sale of business segments, an orderly wind down of certain business lines and asset sales, an exit via restructuring and subsequent initial public offering or other capital markets transaction, or another exit strategy appropriate to the size, structure, and complexity of the

CIDI. If a multiple acquirer exit is included as part of the identified strategy, it may be appropriate for the resolution plan to address the time required for that exit option and any restructuring or other actions needed to address obstacles to separability of divestiture options. If the identified strategy assumes the sale of franchise components or a multiple acquirer exit, the resolution plan should take into account all issues surrounding the CIDI's ability to sell in market conditions present in the applicable economic condition at the time of sale.

Consistent with the proposed rule, in addressing the establishment of the bridge bank, the final rule does not require that a resolution plan demonstrate that the identified strategy is the least-costly to the DIF of all available strategies; in particular, the resolution plan is not required to demonstrate that the identified strategy would be less costly to the DIF than liquidation. Similarly, the resolution plan is not required to include analysis discussing whether the conditions for chartering the bridge bank would be satisfied. Rather, each group A CIDI is required to support its estimation that the identified strategy in the resolution plan maximizes value and minimizes losses to the creditors of the group A CIDI. While commenters noted that this necessarily would be subjective and depend on a variety of factors, the CIDI's assessment of this item will be helpful to the FDIC in making its own assessment in the event of a failure. The valuation analysis discussed below supports the FDIC's ability to evaluate the strategy's impact on value and its potential costs to the DIF across a range of options.

Recognizing that the bridge bank approach may not be optimal for all group A CIDs, consistent with the proposal, the final rule permits a different identified strategy if it best addresses the first prong of the credibility standard (discussed in *credibility criteria* below), could reasonably be executed by the FDIC across a range of likely failure scenarios, and would be more appropriate for the size, complexity, and risk profile of the specific group A CIDI. Also consistent with the proposal, an alternative identified strategy under the final rule could include transferring some but not all business lines and assets to a bridge bank and liquidating others in a receivership. For some group A CIDs, a payment of insured deposits¹⁵ and

¹⁵ This task could be accomplished through a Deposit Insurance National Bank established by the FDIC pursuant to 12 U.S.C. 1821(m).

liquidation of all business lines and assets in receivership may be the most appropriate identified strategy.

Consistent with the proposed rule, the final rule requires any identified strategy to include meaningful optionality for execution across a range of scenarios and provide the information and analysis to inform decisions and support optionality for the FDIC in undertaking a resolution of the CIDI following its material financial distress and failure. One commenter stated that meaningful optionality is a vague and difficult standard. As explained in the preamble to the proposal, meaningful optionality reflects an expectation that an identified strategy be flexible so that it can be adapted to a change in the failure scenario or an unexpected obstacle to its execution. The nature and extent of meaningful optionality will vary based upon the size and complexity of the CIDI. For instance, a relatively smaller and less complex CIDI with a focus on traditional banking may identify only a breakup between two business lines or the spinoff or sale of a separable business unit. For the largest or most complex CIDs, meaningful optionality might include alternatives such as a breakup by business lines and a regional breakup, or by sale of one or more identified franchise components as options for a sale of the IDI franchise. The final rule retains the expectation of meaningful optionality as proposed.

Failure Scenario

The proposal would have required the identified strategy to be based on a failure scenario that demonstrates that the CIDI is experiencing material financial distress. The proposed rule would have required the failure scenario to assume and demonstrate that the CIDI experienced a deterioration of its asset base, and that its high quality assets have been depleted or pledged due to increased liquidity requirements from counterparties and deposit outflows. The proposal noted that, while the immediate cause of failure may be based on liquidity shortfalls, the failure scenario also must consider the likelihood of the depletion of capital and losses in the assets of the CIDI, which may include embedded losses that may not have been recognized by the CIDI for financial reporting purposes. The FDIC has learned that a submission is most valuable when it is based on the assumption that the CIDI has experienced material financial distress such that its failure is a result of the depletion of capital and/or liquidity. While the resolution strategy may be based on an idiosyncratic event

or action, including a series of compounding events, the firm should justify all assumptions, consistent with the conditions of the economic scenario and the nature of the CIDI. These proposed provisions remain substantively unchanged in the final rule.

Under the proposal, the failure scenario would have been required to assume that the U.S. parent holding company is in bankruptcy and is consistent with the approach taken in DFA resolution plans. One commenter objected to the assumption that the parent is in bankruptcy, stating that this assumption is not appropriate for all firm structures and may overlook potential sources of value in resolution and limit the information available to the FDIC. While the FDIC appreciates that the CIDI's parent and parent affiliates may not be in bankruptcy in all cases, experience shows that a bank failure frequently occurs with bankruptcy of the parent and parent affiliates. For that reason, an understanding of the impact of such a failure scenario on the resolution of the CIDI is important for the FDIC to prepare for that possibility and the FDIC believes that this baseline assumption is useful and appropriate. The full resolution submissions will contain information to support an evaluation of outcomes in the event that a coordinated, group-wide approach is feasible. For instance, consistent with the proposal, the final rule requires information on financial and operational interconnections between the IDI and the parent and parent affiliates that will be helpful to the FDIC in considering options should this baseline assumption prove not to be the case in an actual resolution scenario. For these reasons, the FDIC has made no change with respect to this assumption in the final rule.

The FDIC made a clarifying change to the failure scenario by deleting the references to discount window borrowing before or in resolution. While assumptions regarding discount window borrowing are included in the scenarios described in prior DFA resolution plan guidance, these considerations are less important to the FDI Act resolution scenario because of the availability of the DIF for temporary liquidity in resolution. The preamble to the proposed rule noted that the identified strategy may assume continuation of Federal Home Loan Bank (FHLB) advances as well as the availability of short-term liquidity advances from the DIF to meet temporary liquidity needs in resolution, if the identified strategy provides for

timely repayment of those funds, an assumption that was supported by one commenter. As the scenario specifically permits the use of DIF liquidity in resolution, provided that the identified strategy may not assume use of the DIF to avoid losses to creditors of the bridge bank, and may assume the availability of FHLB or other sources of liquidity on applicable terms, it is less significant whether the bridge bank borrows from the discount window. To the extent that the CIDI assumes that DIF funding is used during the resolution by a bridge bank, it must demonstrate the capacity for such borrowing on a fully secured basis and must demonstrate a source of timely repayment.

In addition, the final rule retains the proposal without change to allow flexibility for the FDIC to devise specific failure scenario assumptions with respect to macroeconomic conditions or the precipitating cause of failure. One commenter stated that the FDIC should provide any changes to failure scenario assumptions at least 12 months before a full resolution submission is due. The FDIC will endeavor to provide a group A CIDI notice of additional or alternative parameters for the failure scenario at least one year before the applicable full resolution submission is due. Other comments suggesting that changes to the scenario must be public and apply equally to all group A CIDs were not adopted. The FDIC has learned in past plan reviews and resolution experience that the path to failure is different for different firms and may depend on the particular business structure of an individual CIDI or cohort of CIDs. Accordingly, the FDIC believes that it is appropriate to retain options for flexibility and confidentiality in the development of scenarios.

Executive Summary

The proposed rule would have required a group A CIDI to include an executive summary describing the key elements of its identified strategy. It also would have required a discussion of changes to the group A CIDI's previously submitted resolution plan resulting from any change in law or regulation, guidance or feedback from the FDIC, or any material change. Finally, the proposed rule would have required a discussion of any actions the group A CIDI had taken since submitting its most recent resolution plan to improve the resolution plan's information and analysis, or to improve its capabilities to develop and timely deliver that information and analysis. This provision of the final rule is adopted as proposed. As discussed above, the definition of material change

has been refined from the definition in the proposal.

Organizational Structure: Legal Entities; Core Business Lines; and Branches

The proposal would have required a full resolution submission to describe the CIDI's domestic and foreign branch organization and to provide addresses and asset size. The proposed rule would have also required the CIDI to identify and describe the core business lines of the CIDI, the parent company, and parent company affiliates. The proposed rule would have introduced the requirement to identify all regulated subsidiaries, as this information will assist the FDIC in identifying entities with capital, liquidity, and other requirements, and in assessing these entities' regulatory requirements when it is resolving a CIDI using a bridge bank. The proposed rule would have modified the mapping requirements to require that core business lines be mapped to material entities, franchise components, and regulated subsidiaries, to improve the utility of mapping and support the analysis of franchise components. One commenter objected to the level of informational detail required for regulated subsidiaries, and recommended that the final rule limit the requirements to material entities, as defined, or limit the information required with respect to regulated entities to a list of these subsidiaries and their respective jurisdictions, regulators, and asset sizes. The definition of "regulated subsidiaries" includes registered brokers and dealers, registered investment advisors, registered investment companies, insurance companies, futures commission merchants and other entities regulated by the Commodity Futures Trading Commission, and other, similar regulated entities. These entities, even if relatively small in asset size or income, present complexity in resolution, and it is important to the FDIC to understand their role in the banking organization and the capital and liquidity impacts of these entities if they are maintained by a bridge bank. Accordingly, the final rule adopts this requirement as proposed.

The proposed rule would have required the full resolution submission to describe whether any core business line draws additional value from, or relies on, the operations of the parent company or a parent company affiliate, and identify whether any such operations are cross-border, to support and inform the FDIC's analysis of the impact of breakup of the CIDI from its parent company and parent company

affiliates. This requirement is retained in the final rule.

Methodology for Material Entity Designation

The proposed rule would have required each CIDI to describe its methodology for identifying material entities, to afford each CIDI the flexibility to develop a methodology that is appropriate to the nature, size, complexity, and scope of its operations. The final rule adopts this proposed requirement without change.

Separation From Parent; Potential Barriers or Material Obstacles to Orderly Resolution

The proposed requirements with respect to actions needed to separate a CIDI from the organizational structure of its parent company and parent company affiliates, as well as how to separate the CIDI's subsidiaries from this structure, are adopted without substantive change. The final rule, consistent with the proposal, requires that a full resolution submission address the CIDI's ability to operate separately from the parent company's organization, and that the CIDI assume that its parent company and the parent company affiliates have filed for bankruptcy or are in resolution under another insolvency regime. It also requires addressing the impact on the bridge bank's value if the CIDI were separated from the parent company's organization. These requirements are intended to focus on whether the CIDI, and therefore a bridge bank, can be a viable stand-alone entity from the point of view of economic value and viability of business lines.

Consistent with the proposed rule, the final rule requires identification of potential barriers or other material obstacles to an orderly resolution, the identification of how such barriers or obstacles could pose risks to a group A CIDI's identified strategy, and the identification of inter-connections and inter-dependencies that may hinder the timely and effective resolution of the CIDI. For clarification, the final rule qualifies the potential barriers or other material obstacles to an orderly resolution as those that may occur upon the CIDI's separation from the parent company's organization. Like the proposal, the final rule also provides for the CIDI to identify any remediation steps or mitigating responses necessary to eliminate or minimize these barriers or obstacles.

Overall Deposit Activities

Consistent with the proposal, the final rule requires a full resolution submission to include important

information about deposit activities. One comment letter suggested that instead of requiring this information, the rule should focus on ensuring that the CIDI has the capabilities to provide the necessary information timely. The FDIC agrees that the capabilities to provide this information on a current basis would be important in resolution. The CIDI's provision of the information required would be one way to demonstrate these capabilities. This information would give the FDIC a baseline view of the deposit activities of each CIDI and assist the FDIC in contingency planning activities for a potential failure of the CIDI, recognizing that updates would be needed in an actual resolution event.

The final rule adopts the proposed requirements with respect to deposit activities, which include information about insured and uninsured deposits. While the proposal would have required information on commercial deposits by business line and unique aspects of the deposit base or underlying systems, the final rule provides clarification of that particular aspect of the requirement. The final rule specifies that the requirement is to identify "particular deposit concentrations," in addition to other aspects of the deposit base or underlying systems that may increase complexity in resolution. The final rule retains the proposed requirement to describe how types or groups of deposits are related to a core business line, business segment, or franchise component and how they are identified in the CIDI's systems or records. As discussed in the preamble to the proposed rule, the deposits related to a particular franchise component must be readily identified to facilitate the separation and sale of the franchise component along with the associated liabilities. Similarly, in a multiple acquirer exit, which may involve regional breakup of the CIDI or a breakup of its business lines, it will be important to understand how to identify the deposits that would relate to the various divestiture options in such a breakup.

Consistent with the proposal, the final rule requires a discussion of foreign deposits and identification of deposits dually payable in the U.S. The final rule also adopts the proposed requirements with respect to information about deposit sweep arrangements with affiliates and unaffiliated parties and the contracts governing those arrangements. The final rule clarifies the proposal by stating that the FDIC needs information about the CIDI's reporting capabilities to generate accurate and timely contact information for omnibus, deposit sweep,

and pass-through accounts. The FDIC intends this clarification to be a non-substantive change.

The final rule adopts the proposed requirements with respect to identification of key depositors, which are defined as depositors that hold or control the largest deposits (whether in one account or in multiple accounts) that collectively are material to one or more business segments. Each key depositor must be identified by name, business segment, and amount of deposit, and the CIDI must identify other services it provides to that depositor. One commenter stated that the required information regarding deposit activities should be narrowed, but the commenter did not propose an alternative approach. The FDIC asked for feedback on the approach to identification of key depositors but did not receive feedback. Rather than providing for a prescriptive approach, the final rule simply requires a description of the approach used by the CIDI in identifying its key depositors. While in some cases providing information on the top 10 or 20 percent of deposits may be the best approach, in others it may be the top 50 or 400 depositors, or it may be that the nature of the relationship is a crucial identifying feature. Key depositors should include those depositors that the CIDI monitors most closely and may want to engage with in a stress event.

Critical Services

The final rule adopts the proposed requirements with respect to critical services without substantive change. This includes the requirement that the CIDI be able to demonstrate capabilities necessary to ensure continuity of critical services in resolution. Under the final rule, full resolution submissions are required to identify critical services and critical services support and include an explanation of the criteria by which critical services are identified in order to clarify for the FDIC the CIDI's approach to this content element. The final rule requires the identification of critical services and critical services support provided by the parent company or a parent company affiliate, as well as the physical locations and jurisdictions of critical service providers and critical services support that are located outside of the United States. The full resolution submission must map critical services support to legal entities that provide those services directly or indirectly through third parties. In addition, a full resolution submission must map critical services to the material entities, core business lines, and franchise components supported by

those critical services. It also must include information about the critical services and critical services support that may be at risk of interruption if the CIDI fails and the process the CIDI used to make that determination. The full resolution submission must also discuss potential obstacles to maintaining critical services that could occur in the event of the CIDI's failure and steps that could be taken to remediate or otherwise mitigate the risk of interruption, describe the CIDI's approach for continuing critical services in the event of the CIDI's failure, and provide information about the contracts governing the provision of these services. Consistent with the proposal, the final rule requires a CIDI to provide information about its process for collecting and monitoring the contracts governing critical services and critical services support. As noted in the preamble to the proposed rule, providing information about the systems that store these contracts and how this information is stored (e.g., centrally, by business line or material entity, by business function, etc.) would provide the FDIC with valuable information when seeking to understand a CIDI's operations and business relationships.

Key Personnel

The final rule adopts without change the proposed requirements with respect to key personnel, including that a CIDI must identify key personnel and describe its methodology for identifying key personnel, and must furnish information regarding the identification of employee benefit programs provided to key personnel and any applicable collective bargaining agreements or similar arrangements. Key personnel are defined broadly in the rule, and should include personnel tasked with an essential role in support of a core business line, franchise component, or critical service, or having a function, responsibility, or knowledge that may be significant to the FDIC's resolution of the CIDI. Key personnel should include personnel that hold or maintain necessary licenses or permits for domestic or foreign operations at the CIDI or have been designated as key personnel to domestic or foreign authorities. Consistent with the proposal, the final rule requires a CIDI to provide a recommended approach for retaining key personnel during its resolution that, for example, may specify retention bonuses and other retention incentives. This approach should consider and address employees most at risk for leaving the CIDI promptly upon a failure event.

Franchise Components

The proposal included certain requirements with respect to the identification of franchise components and related capabilities. Under the proposal, a franchise component was defined as a business segment, regional branch network, major asset or asset pool, or other key component of the IDI franchise that could be separated and sold or divested.

In response to comments, the final rule makes certain adjustments to the requirements with respect to franchise components. The proposed rule included the requirement that a CIDI must be able to demonstrate the capabilities to ensure that franchise components are separable and marketable in resolution. The final rule eliminates the word separable from this definition. Instead of referring to separability as a required capability of a CIDI, the emphasis of the final rule is on the identification of franchise components that are, in their current circumstances, separable. The final rule retains the requirement that a CIDI must be able to demonstrate the capabilities necessary to market the franchise components.

In addition, the final rule makes an express reference to the IDI franchise in this sentence to make clear that this capability also must support the marketing of the IDI franchise as a whole or in conjunction with the marketing of its franchise components. Although the final rule does not permit a closing weekend sale as the identified strategy for the reasons discussed above, a sale of the IDI franchise, whether over closing weekend or following a bridge bank period, is an important option in resolution. It is therefore essential that CIDs maintain the capabilities necessary to support marketing of their IDI franchises as well as their franchise components.

The proposal included the requirement that the full resolution submission identify franchise components that are currently separable and marketable in a timely manner. The proposed rule received one comment with respect to this requirement. The commenter stated that there should not be a specified timing requirement for the sale of franchise components and that the imposition of a time period, especially a short one, such as 60 or 90 days, would not be appropriate or realistic. In particular, the commenter stated that it would not work for multiple acquirer exit strategies, which require months to execute.

The final rule retains the proposed definition of the term "franchise

component” as discussed above and retains text of the proposed rule with respect to identification of franchise components that are currently separable and are marketable in a timely manner. The intent is to identify franchise components that can be marketed and sold in their current state, *i.e.*, without significant obstacles or the need for restructuring. This will enhance optionality for the FDIC, creating the potential for marketing of the IDI franchise as a whole as quickly as possible following the failure of the CIDI. Thus, the phrase “timely manner” is retained. Although the FDIC did not propose and is not now including a specific time requirement, “timely” marketing capabilities should be measured in days or weeks, not months.

The FDIC notes that the adopted approach to separability and marketability of franchise components is distinguishable from the proposed approach taken with respect to the identification of divestiture options to support a multiple acquirer exit from a bridge bank. The multiple acquirer exit is a possible element of an identified strategy, a requirement that applies only to group A CIDs. Such an exit option may require restructuring and divestiture options that present greater obstacles and that may require a longer period than for a sale of the franchise components. For example, an identified franchise component might be a broker-dealer or mortgage servicing subsidiary within the bank chain, or a material asset portfolio, that is readily separable from the IDI and can be marketed as an option at the time of failure. On the other hand, divestiture options may be the result of a regional breakup of the CIDI or a breakup of business lines that require significant restructuring in order to market the regional or business line segments separately.

The proposed rule would have required franchise components identified in a full resolution submission to be sufficient to implement the identified strategy (for group A CIDs) and to provide meaningful optionality across a range of scenarios if the preferred approach is not available. The requirement to provide meaningful optionality across a range of scenarios is deleted from this paragraph as superfluous. That expectation is subsumed in the first prong of the credibility standard applicable to group A CIDs, which is discussed above.

Consistent with the proposed rule, the final rule sets forth basic informational elements required for each franchise component, including identification of responsible senior management and

provision of metrics depicting each franchise component’s size and significance. Useful metrics may include total revenue, net income, percentage market share, and, if applicable and available, total assets and liabilities. The full resolution submission must also include a description of the key assumptions for each franchise component divestiture and all significant impediments and obstacles to execution of a franchise component divestiture, including legal, regulatory, cross-border, or operational challenges.

The final rule retains these paragraphs as proposed. The final rule makes no change to the proposed requirement that a full resolution submission must include a description of the CIDI’s capabilities and processes to initiate marketing of the franchise component and provide a description of necessary actions and a timeline for the divestiture supported by a description of the key underlying assumptions. The final rule also adopts the requirement in the proposal that the CIDI describe the process it would use to identify prospective bidders for its franchise components. The FDIC makes every effort to market failed banks—and their assets and business segments—as widely as possible. A requirement that CIDs provide analysis on identification of prospective bidders of franchise components supports that effort. In addition to describing the process for identification of prospective bidders, identifying those prospective bidders, either specifically or by industry or category, would also be helpful.

The final rule incorporates the proposed requirements with respect to a virtual data room (VDR), which, among other things, must include information sufficient to permit a bidder to provide an initial bid on the IDI franchise or the CIDI’s franchise components. One commenter stated that the VDR requirements should be aligned with the DFA rule expectations regarding due diligence rooms. The comment also stated that the FDIC should not require ongoing maintenance of a VDR and not establish a timeframe for setting up the VDR because time requirements may vary across CIDs. It also stated that the FDIC should note that the list of VDR elements is merely indicative.

The VDR requirements in the final rule are consistent with the expectations in the U.S. GSIB guidance¹⁶ issued in connection with the DFA rule that

would apply to any divestiture option identified in a DFA resolution plan, which could include any subsidiary or component of the firm’s global organization. Reflecting the different focus of this rule, it provides more detail than the U.S. GSIB guidance about the informational elements that would be appropriate for a VDR to be utilized in the sale of the IDI franchise and the CIDI’s franchise components. The final rule, like the proposal, does not require the ongoing maintenance of a VDR; rather it is focused on the capabilities to establish a VDR in a timely manner.

The final rule is unchanged from the proposal with respect to the length of time during which a VDR must be able to be populated, in that it does not provide a prescriptive time. However, the capabilities should support a very short time frame to stand up a VDR and not rely upon a stabilized bridge bank to extend the time available to do so. The final rule requires a description of the length of time and any challenges or obstacles to providing complete and accurate information necessary to support a competitive bid, with an expectation that this time frame will be brief and measured in days.

The list of content elements to be included in the VDR is indicative and not comprehensive; the specific information and data that would be appropriate and sufficiently detailed to support prompt and competitive bids will vary among CIDs. For instance, deposit data and information elements might include a complete, current deposit trial balance reconciled to the general ledger, a description of the largest depositor relationships, information regarding sweeps and brokered deposits, and other data useful to inform a bid. Loan and lending operations information might include a loan tape or loan trial balance reconciled to the general ledger, loan portfolio file samplings, underwriting policies, information regarding real estate owned, and key lending relationships. Where the CIDI has non-traditional business lines, the information provided should be appropriate to the sale of those elements as franchise components or as part of the IDI franchise. The data and information as a whole should support a sale of the IDI franchise as a whole, while providing optionality for the sale of separable franchise components. The final rule was modified from the proposal to make clear that certain of the listed data elements may not apply in some cases, such as for the sale of a franchise component that is a material asset portfolio.

¹⁶ Guidance for section 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 FR 1438 (Feb. 4, 2019).

Finally, to effect a timely sale of a failed IDI, the FDIC must have access to and control of data in a VDR. Historically, the FDIC has established a VDR controlled by the FDIC and migrated the information into that VDR. As in the proposal, the final rule requires the full resolution submission to include information with respect to access protocols and requirements for the FDIC to use the VDR to carry out the sale of the IDI franchise or the CIDI's franchise components. It also must include a description as to how the CIDI could support that process, either through providing sufficient access and controls to the CIDI's virtual data room to the FDIC as receiver for the failed IDI, or by establishing a process to timely and securely migrate all data to an FDIC-controlled VDR, in a suitable format and file structure.

Because many of the CIDs have a broker-dealer subsidiary or parent company affiliate, the final rule also includes, without change, the proposed provision specifically addressing VDR content related to a broker-dealer. It is not the intent of that provision, however, to exclude or limit information related to other non-banking activities such as insurance or asset management.

Material Asset Portfolios

The proposed rule would have required CIDs to include information about "asset portfolios," including how the assets within the portfolio are valued and recorded in the CIDI's records. As proposed, a CIDI would have been required to identify and discuss impediments to the sale of each material asset portfolio and to provide a timeline for each material asset portfolio's disposition. A commenter noted that the concept of "material asset portfolios" appears to be included in the definition franchise components and therefore, a separate requirement regarding material asset portfolios is redundant and unnecessary. The final rule retains the proposed requirement and exclusively utilizes the defined term "material asset portfolios." With respect to the definition of franchise components, the final rule utilizes the term "material asset portfolio" instead of "asset pool" for clarity and consistency. While a material asset portfolio may be identified as a franchise component, this paragraph requires identification of material asset portfolios whether or not they meet the definition of a franchise component and are identified as such in the full resolution submission. However, where there is overlap with material asset portfolios that are franchise

components, the information can be provided once and cross-referenced, if appropriate.

Valuation To Facilitate FDIC's Assessment of Least-Costly Resolution Method

As explained in the preamble to the proposal, the requirement that each group A CIDI must provide valuation analysis and develop the related capabilities would support the FDIC's analysis in conducting valuations in any actual failure scenario, even where there are no bid prices available to establish value. The proposed rule would have required group A CIDs to demonstrate the capabilities necessary to produce valuations that support the FDIC's analysis to determine whether a resolution strategy would be the least costly to the DIF in the event of failure. To demonstrate valuation capabilities, the proposed rule would have required a group A CIDI to describe its valuation process in its resolution plan and include a valuation analysis that includes a range of quantitative estimates of value as an appendix to its resolution plan.

The proposed valuation analysis required that a group A CIDI provide a narrative description of how it values its franchise components and the CIDI as a whole. It also required qualitative and quantitative valuation analysis assuming both an all-deposits bridge bank and the transfer of insured deposits only to the bridge bank. In all cases, the proposed rule required that the resolution plan describe the CIDI's approach to gathering information needed to support its analysis and its ability to produce updated and timely valuation information.

The FDIC received several comments to the proposal with respect to the proposed requirements for valuation analysis. Several commenters emphasized the importance of valuation to resolution planning. Three commenters supported the replacement of least-cost analysis with a valuation capabilities requirement, but disagreed with the proposed approach to quantitative analysis. One commenter argued that assumptions regarding depositor and potential acquirer behavior would be "inherently subjective and likely to add little-to-no value to the FDIC." This commenter also stated that the quantitative analysis is not well adapted to CIDs that lack experience with mergers and acquisitions or large mergers and acquisitions teams, and would require retention of third parties.

The FDIC considered commenters' concerns regarding the requirement for

quantitative analyses. The final rule partially retains the requirement for quantitative analysis, with some modifications. There is significant value in a group A CIDI demonstrating that it has the capability to value its deposit franchise, as well as the individual franchise components. The proposed valuation content requirements are not underpinned by an expectation that the resulting ranges of value will accurately anticipate sale proceeds actually received from a disposition at some undetermined future point. Instead, the utility of CIDs' valuation analysis is in understanding the methodologies CIDs determine to be appropriate for estimating the value of their franchise components and the CIDI as a whole, and the degree to which CIDs would be able to furnish the information and analysis necessary for the FDIC to conduct its statutorily-required analyses in an actual resolution scenario.

The evaluation of valuation analyses under the second prong of the credibility standard reflects a recognition of the inherent necessity for application of judgment in the analyses (e.g., selection of appropriate valuation approaches, assignment of weights to the various approaches). As required by the standard, the CIDI's judgment should be supported by observable and verifiable capabilities and data, as well as reasonable projections. Thus, the FDIC will not evaluate the analysis on the basis of a specific threshold or metric or the specific choices made regarding valuation approaches and methodology, but rather on the comprehensiveness of the analysis, the supportability of the data and capabilities required to conduct the analysis, the reasonableness of the CIDI's assumptions and selected approaches, and the group A CIDI's ability to refresh the analyses in a timely manner. The FDIC does not require or expect valuation analysis to be completed by a third-party expert; rather the analysis should be based upon the group A CIDI's understanding of the nature of its business and its relationships with its depositors.

In response to comments, the final rule eliminates the requirement that valuation estimates reflect the "net present value of proceeds estimated to be received" in a sale of the IDI franchise as a whole or under a sum-of-the-parts analysis. This change recognizes that, while the required valuation analysis will result in a range of reasonable values, the actual proceeds realized in a given transaction will depend on, among other things, the facts and circumstances surrounding the

actual failure and the time for marketing and executing the transaction.

In addition, in response to comments, the final rule modifies the proposed requirements to reflect a shift toward qualitative analysis only for § 360.10(d)(12)(ii)(B), eliminating the quantitative analysis relating to the impact on value in the event that losses are imposed on uninsured depositors in connection with the resolution strategy adopted.

The presence of unsecured debt on the balance sheet of the failed IDI serves to protect deposits in resolution, and increase the likelihood that an all-deposits bridge bank will meet the requirements of the least-cost test. However, even with the benefits of long-term debt positioned at the CIDI at the time of its failure, it cannot be assured that an all-deposits bridge bank will meet the requirements of the least-cost test in every case. Thus, the final rule, like the proposal, also requires analysis of the impact on value where only insured deposits are passed to the bridge bank. This analysis will assist the FDIC in understanding the impact on value in an insured-only bridge bank, which will assist in weighing whether that outcome is less costly than other available resolution options. While the proposal required quantitative as well as qualitative analysis in this area, in response to comments, the final rule requires a group A CIDI to provide only qualitative analysis of the impact on franchise value that may result from not transferring uninsured deposits to the bridge depository institution. The quantitative analysis provided with respect to an all-deposits bridge bank, together with robust qualitative analysis with respect to an insured-only bridge bank, will support the FDIC's least-cost determination under both scenarios. This qualitative analysis must include a description of options to mitigate that impact, such as an advance dividend payment to depositors, reflecting different levels of loss. As clarified in the final rule, such a qualitative analysis should reflect reasonable assumptions of customer behavior based upon the group A CIDI's overall depositor profile and the provision of overall lending and other services to such depositors. For example, insight into the holistic client relationships, including the lending, fee-based, and deposit-based businesses would provide insight into the value impact.

Off-Balance Sheet Exposures

The final rule incorporates the proposed requirement that a full resolution submission include a description of any material off-balance-

sheet exposures, including unfunded commitments, guarantees, and contractual obligations, and that it map those exposures to franchise components, core business lines, and material asset portfolios.

Qualified Financial Contracts

The final rule includes the proposed requirements for information on qualified financial contracts (QFCs), which are intended to support and enhance information that may be provided under the FDIC's QFC recordkeeping rule, and would be useful in the event that the CIDI were not subject to the requirements of the QFC recordkeeping rule at the time of its failure.¹⁷ The focus of the information required is on the relationship of QFCs to the CIDI's core business lines and franchise components, and how these transactions are integrated with the CIDI's business activities and with other services provided to customers. Consistent with the proposal, the final rule also requires CIDs to provide information about their booking models for risk, and how the CIDI uses QFCs to manage hedging or liquidity needs. This information will help the FDIC make decisions with respect to transferring QFCs to a bridge bank, and to better understand the impact of any decision not to transfer certain QFCs. The final rule also includes certain revisions to the language of this paragraph, which are intended as clarifying changes.

Unconsolidated Balance Sheet; Material Entity and Regulated Subsidiary Financial Statements

The final rule adopts the proposed requirement that a CIDI must provide an unconsolidated balance sheet and consolidating schedules for all material entities and regulated subsidiaries that are subject to consolidation with the CIDI. The final rule also adopts the provision permitting CIDs to aggregate on the consolidating schedule amounts attributed to entities that are not material entities or regulated subsidiaries. The final rule includes clarifying changes intended to more clearly state that all of the requirements apply to regulated subsidiaries as well as material entities. Consistent with the proposal, the final rule requires audited financial statements where they are available.

Payment, Clearing, and Settlement Services

The final rule adopts, with clarifying changes, the proposed requirement that a full resolution submission provide

information regarding each payment, clearing, and settlement (PCS) provider with which it has a direct relationship. The text was revised to make clear that payment, clearing, and settlement systems include services provided by financial market utilities and agent banks, and makes "PCS service provider" a new defined term. Consistent with the proposal, information is required for PCS service providers that are critical services or critical services support. Also consistent with the proposal, the final rule requires CIDs to map PCS service providers to legal entities, core business lines, and franchise components, and to describe the services provided by these systems, including the value and volume of activities on a per-provider basis.

The final rule also adopts the proposed requirement for a full resolution submission to describe PCS services provided by a CIDI and that are material in terms of revenue to or value of any franchise component or core business line of the CIDI.

Capital Structure; Funding Sources

The final rule adopts, with clarifying changes, the proposed requirements with respect to capital structure and funding sources. Two comments were supportive of the proposed approach. The final rule requires that a full resolution submission describe the current processes used to identify the funding, liquidity, and capital needs of and resources available to each CIDI subsidiary or foreign branch that is a material entity, and to describe the CIDI's capabilities to project and report its near-term funding and liquidity needs. It requires that the full resolution submission identify the composition of liabilities of the CIDI, as a clarification of the proposed requirement to describe them, and specifies the requisite information to be provided with respect to those liabilities. The final rule also requires a CIDI to identify material funding relationships and material inter-affiliate exposures between the CIDI and its subsidiaries or foreign branches that are material entities, instead of the proposed requirement to describe them. These changes are intended to clarify that the full resolution submission is expected to include quantitative information for these areas, and are complementary to the expectation that the interim supplement will not include any additional narrative apart from the description of material changes as described in § 360.10(e)(2)(i) and (ii).

¹⁷ See generally 12 CFR part 371.

Parent and Parent Company Affiliate Funding, Transactions, Accounts, Exposures, and Concentrations

The final rule adopts, with clarifying changes, the proposed requirements with respect to parent and parent company affiliate funding, transactions, accounts, exposures, and concentrations. The final rule requires that a CIDI's full resolution submission must identify material affiliate funding relationships and material inter-affiliate exposures that the CIDI or its subsidiaries have with the parent company or any parent company affiliate, instead of the proposed requirement to describe them. Similar to above, this clarifying language is intended to make clear that the full resolution submission is expected to include quantitative information and is complementary to the expectation that the interim supplement will not include any additional narrative apart from the description of material changes as described in § 360.10(e)(2)(i) and (ii). The full resolution submission must identify the nature and extent to which the parent company or any parent company affiliate serves as a source of funding to the CIDI and CIDI subsidiaries. The final rule requires that the submission include the terms of any contractual arrangements, including any capital maintenance agreements, the location of related assets, funds or deposits, and the mechanisms for such inter-affiliate transfers, revised to include funds transferred from parent company affiliates.

Economic Effects of Resolution

The proposed rule would have required CIDs to identify their activities that are material to a particular geographic area or region of the United States, a particular business sector or product line, or other financial institutions. It also would have required the full resolution submission to describe the potential disruptive impact of the termination of such activities on the geographic area, region, business sector, industry, or product line, or to the U.S. financial industry.

The FDIC received several comments to the proposed approach with respect to the requirement that the full resolution submission describe disruptive impacts in resolution. Commenters objected to the proposed approach, arguing that it would require "speculative" assessment of impacts on third parties, that the information may be better available to supervisors with a wider vantage point on impacts, and that the proposal is too broad and vague and should be more clearly defined. The

FDIC agrees that the assessment of the potential disruptive impacts on third parties may be difficult and possibly speculative, and would have limited value. Accordingly, the final rule eliminates that requirement and substitutes a narrower requirement: that the full resolution submission discuss whether the identified services or functions are readily substitutable by other providers and other mitigants to the potential impact of the termination of those activities in the event of failure of the CIDI.

The CIDs are the nation's largest banks, and the FDIC will seek to resolve a CIDI in a way that minimizes the disruptive impact of the resolution to the extent possible. It is therefore important that the FDIC is aware of the activities of the CIDI that are most likely to have significant disruptive effects if terminated in resolution, such as where a CIDI provides a unique function or is a dominant provider of a particular service. While the CIDI may not be able to fully measure or assess those impacts, a CIDI will be able to identify areas where it has a large market share of a particular business segment or geographic region, or where it provides significant services to other financial institutions, such as agent or correspondent banking services. A description of the impact of cessation of these services or functions, and information regarding whether there are other providers with the capacity to readily substitute for the activities of the CIDI or other mitigants to the impact of termination of these services are important to understanding the potential impacts and mitigating actions that may be useful in the FDIC's resolution planning.

Non-Deposit Claims

The final rule adopts without change the proposed requirement that a CIDI's full resolution submission identify and describe its capabilities to identify the non-depositor unsecured creditors of the CIDI and its subsidiaries that are material entities. Consistent with the proposal, the final rule also requires a description of how the CIDI would identify all non-depositor unsecured liabilities, including contingent liabilities like guarantees and letters of credit, as well as the location of the CIDI's related records and its recordkeeping practices. While related to the requirements in § 360.10(d)(17) addressing capital structure and funding sources, the requirements in this paragraph are intended to provide information specifically helpful to the claims process, and would be in

addition to the description of liabilities provided in § 360.10(d)(17).

Cross-Border Elements

The final rule adopts with certain changes the proposed requirements with respect to cross-border elements in a full resolution submission. The FDIC received one comment on this proposed element, which supported the inclusion of the element as proposed. Consistent with the proposal, the final rule requires a full resolution submission to describe components of cross-border activities of the parent company or parent company affiliates that contribute to value, revenues, or operations of the CIDI. Where the CIDI has a significant interest (e.g., a controlling interest or a significant economic interest) in a foreign joint venture that contributes to revenue or operations of the CIDI, that information should be included. Entities with no meaningful function or contribution to the CIDI's operations, such as single purpose real estate holding companies, may be excluded.

Consistent with the proposal, the final rule also requires that a full resolution submission identify regulatory or other impediments to divestiture, transfer, or continuation of foreign branches, subsidiaries, or offices while the CIDI is in resolution, including retention or termination of personnel and adding in the final rule, transfer or continuation of licenses or authorizations. Further, the final rule adds an express requirement that the full resolution submission must identify all authorities with regulatory or supervisory authority over cross-border operations. This information will assist the FDIC in coordinating with the requisite authorities in resolution.

Management Information Systems; Software Licenses; Intellectual Property

The final rule adopts without substantive change the proposed requirement that each CIDI's full resolution submission identify and describe each key management information system and application, and identify any core business line that uses it, and the key personnel needed to support and operate it. In the final rule, the term key personnel is used here instead of "personnel by title and legal entity employer." Each full resolution submission also is required to identify each system's and application's use and function, which core business lines use it, and its physical location, if any, as well as any related third-party contracts or service-level agreements, any related software or systems licenses, and any other related intellectual property. Consistent with the proposal, the final rule also requires a full resolution

submission to specifically identify key systems or applications that the CIDI or its subsidiary does not own or license directly from the provider and to discuss how to maintain access to the system or application when the CIDI is in resolution. Like the proposal, the final rule requires a description of the capabilities of the CIDI's processes and systems to collect, maintain, and produce the information and other data underlying the full resolution submission; identification of all relevant systems and applications; and a description of how the information is managed and maintained. For example, the full resolution submission must describe whether the information is centralized, or organized by region or business line; whether it is automated or manual; and whether the applicable system or application is integrated with other of the CIDI's systems or applications. The final rule also provides for the CIDI to describe any deficiencies, gaps, or weaknesses in these capabilities and the actions the CIDI intends to take to address promptly any such deficiencies, gaps, or weaknesses, and the time frame for implementing these actions.

Digital Services and Electronic Platforms

The proposal included a new content element for inclusion in each CIDI's full resolution submission regarding digital services provided by a CIDI to its customers and the electronic platforms that support these systems. The FDIC received one comment, asserting that the requirement regarding digital services and electronic platforms is vague and potentially duplicative of other requirements, such as critical services, payment, clearing, and settlement, and management information systems. The final rule retains the requirement as proposed. While some of the requirements may overlap with other requirements in the rule, such as whether the services and platforms are provided by a CIDI subsidiary, a parent company affiliate, or a third-party and information on the related intellectual property rights, this paragraph is intended to capture information specific to digital services and electronic platforms. If the information is provided elsewhere, a cross-reference will suffice. The final rule uses the word "customers" instead of "depositors" in the first sentence of the paragraph, to clarify that retail and business customers may include depositors or other customers or clients of the CIDI.

As noted in the preamble to the proposal, digital services provided to

customers and their electronic platforms is a new and evolving area of banking. The language in the final rule is intended to be flexible enough to adapt to the changing environment, while focusing on the significance of these services to CIDI operations or customer relationships and their relationship to franchise value and depositor behavior. The information required will be helpful to the FDIC in understanding how such services are significant to customer loyalty and franchise value where they are unique, may rely on proprietary intellectual property with low substitutability, may have an impact on stickiness of retail or commercial deposits, or are important to a customer base that relies upon a certain platform or service.

Communications Playbook

The final rule adopts the proposed requirement that a full resolution submission must include a communications playbook describing the CIDI's current communications capabilities and how those capabilities could be used from the point of the CIDI's failure through its resolution. One commenter supported this requirement as proposed, while one commenter suggested elimination of this requirement as unnecessary. The final rule retains the requirement for a communications playbook and adds an express requirement that the playbook include the identification of key personnel responsible for the CIDI's crisis communications across key stakeholder categories and communications channels and the organizational structure for relevant communications activities. It also clarifies that the stakeholders should include any foreign regulatory authorities as well as domestic regulatory authorities. In a resolution, it is important for the FDIC to be able to quickly identify the right points of contact to assure timely, clear, and coordinated communications to all stakeholders.

Corporate Governance

The final rule adopts without change the proposed requirements for the governance of the CIDI's resolution planning processes and preparation and approval of full resolution submissions.

CIDI's Assessment of the Full Resolution Submission

The final rule adopts without change the proposal that a full resolution submission must include a description of any contingency planning or similar exercise that the CIDI has conducted since its most recently filed full

resolution submission that assesses the viability of the identified strategy (if required) or improves any capabilities described in the full resolution submission. As noted in the preamble to the proposal, the requirement is limited to requiring CIDIs to describe contingency planning or exercises they have done or plan to do; it does not require CIDIs to conduct these types of activities.

Any Other Material Factor

The final rule requires a CIDI to identify and discuss any other material factor that may impede its resolution. This is unchanged from the proposal.

E. Interim Supplement

Under the proposal, each CIDI would be required to file interim supplements that address all or parts of certain content elements included in the CIDI's full resolution submission. The FDIC received comments to the proposed interim supplement requirements and made changes to the final rule in response to those comments.

Several commenters argued for narrowing the content required in the interim supplement to focus on data and information that has materially changed since the most recent submission or has a material impact on the full resolution submission. One commenter suggested that any narrative in the interim supplement be limited to an explanation of material changes. Commenters expressed concern that the interim supplement, as proposed, would be burdensome for CIDIs.

One commenter suggested that the interim supplement should be based on prior year-end data, rather than data as of the end of the most recent fiscal quarter.

Two comment letters recommended that all or most group A CIDs should move to a three-year cycle for full resolution submissions and interim supplements should be filed either 18 months after that submission, or in each year that a full resolution submission is not made. One of these comment letters recommended that CIDI affiliates of U.S. GSIBs, which are biennial filers under the DFA rule, make full resolution submissions every two years, alternating with DFA resolution plan submissions, and interim supplements would therefore be unnecessary and should not be required.

The FDIC considered these comments and has concluded that the content requirements for the interim supplement are appropriate and that the information required will aid the FDIC with planning for and carrying out resolutions. As a result, the final rule

retains the proposal's content requirements for the interim supplement. With the final rule's shift to a three-year cycle for most CIDs, the expected utility of the interim supplement is further increased. The FDIC believes the interim submission requirement strikes the right balance between providing the FDIC with valuable updated information to assist with resolution planning while limiting burden on the CIDs in providing the updated information. The FDIC has focused the interim supplement content requirements on information that is most essential to its resolution planning, that can be readily produced, and that is relatively likely to change year over year. Under the final rule, the FDIC retains the proposed discretion to add or eliminate elements from the interim supplement to ensure that it remains useful, includes the most important information, and can evolve based on lessons learned.

In response to comments, the final rule incorporates a requirement to describe all material changes resulting from an extraordinary event, and to describe each material change applicable to interim supplement content since the CID's most recent full resolution submission or interim supplement (or to affirm that no such material change has occurred). The FDIC does not expect any additional narrative will need to be included in the interim supplement.

Also in response to comments, the final rule provides that data in the interim supplement should be as of the most recent fiscal year-end for which the CID has financial statements or, if financial information from more recent financial statements would more accurately reflect the CID's operations as of the date of the interim supplement, financial information as of that more recent date. This is reflected in § 360.10(g)(1), which has been revised to incorporate a reference to the interim supplement in addition to full resolution submissions. With this change, the proposal's § 360.10(e)(2) has been eliminated as it is no longer necessary.

Regarding the frequency of interim supplement filings, the final rule makes certain changes for clarity and consistency, and introduces an exception. The final rule retains the annual cadence of interim supplements, and requires an interim supplement on or before the anniversary of the prior full resolution submission or interim supplement, as the case may be, unless the FDIC provides written notice of a different date. Consistent with the proposal, no interim supplement is

required in the calendar year in which a CID files a full resolution submission. In response to comments, the final rule provides that biennial filers, which are IDI affiliates of U.S. GSIBs, are not required to submit an interim supplement in the year in which they file a DFA resolution plan. This exception applies only to the biennial filers, given their higher frequency of submissions under this rule, and expected annual submission of resolution plans under this rule and by their parent companies under the DFA rule. In addition, particularly for CIDs identified as material entities and divestiture options in the DFA resolution plan, there is sufficient overlap in content to meet the needs of the interim supplement.

The final rule makes clear that all CIDs will receive a written notice specifying the date on which their initial full resolution submission or interim supplement is due. CIDs that are not filing a full resolution submission as their first submission following the effective date of the final rule are required to provide interim supplements in the years prior to the date their first full resolution submission is due.

F. Credibility; Review of Full Resolution Submissions; Engagement; Capabilities Testing

Credibility Criteria

The proposal included a credibility standard consisting of two prongs for assessing the credibility of a full resolution submission. The first prong applies only to resolution plans submitted by group A CIDs. Under this prong, a resolution plan could be found not credible if the identified strategy did not provide timely access to insured deposits, maximize value from the sale or disposition of assets, minimize any losses realized by creditors of the CID in resolution, and address potential risks of adverse effects on U.S. economic conditions or financial stability. The second prong applies to full resolution submissions by all CIDs. Under the second prong, a full resolution submission could be found not credible if the information and analysis in the full resolution submission are not supported with observable and verifiable capabilities and data and reasonable projections, or the CID fails to comply in all material respects with the requirements of the rule. Because the interim supplement is simply an update of a subset of information required in a full resolution submission, it will not be separately

assessed against the credibility standard.

The FDIC considered all comments regarding the credibility standard, and the final rule retains the credibility standard as proposed. One commenter recommended that all full resolution submissions be subject to both credibility assessment prongs as part of a general recommendation to eliminate the distinction between group A CIDs and group B CIDs. As discussed above, the FDIC believes that the distinction between group A CIDs and group B CIDs is appropriate, and therefore the prong one standard would not be applicable to the informational filings.

Another commenter suggested that the requirement that the identified strategy be effective in minimizing losses to creditors was in contradiction with the recent rulemaking proposal by the FDIC and other agencies to require certain large insured depository institutions to have outstanding a specified amount of eligible long-term debt.¹⁸ The FDIC believes that the goals of the proposed rulemaking and this final rule are strongly aligned. The long-term debt rule, if adopted, will help reduce losses to creditors and will support an orderly and efficient resolution of an IDI.

The FDIC received three comments recommending that the credibility determination be eliminated, or that there should not be any enforcement action based on the credibility standard. These commenters argued that the standard's first prong would require speculation on conditions at the time of failure and would therefore be subjective and potentially inconsistently applied over time. The FDIC received one comment advocating for changes to the second prong of the credibility standard that would remove the qualifiers "verifiable" and "observable" for capabilities requirements.

It is an important goal of the final rule to establish clear expectations with respect to the form and substance of resolution submissions, and a clear standard against which they are assessed for compliance with the rule. The FDIC has experience in evaluating resolution plans and generally expects to conduct horizontal reviews across full resolution submissions of CIDs that have similar characteristics to gain a broader perspective as well as to assure consistent assessment of the full resolution submissions.

¹⁸ See Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions, 88 FR 64524 (Sept. 19, 2023).

As described in the preamble to the proposal, the new standard expressly incorporates concepts from the 2012 rule, including the reference to observable and verifiable capabilities and data and reasonable projections. These elements of the credibility standard, which are incorporated into the second prong, have proved useful in past plan reviews and feedback.

With respect to prong one of the standard, the FDIC considered comments suggesting that this standard may be subjective or imprecise. The FDIC appreciates the concern that the standard necessarily requires the exercise of judgment in understanding whether value is maximized or losses to creditors are minimized, for example, in a particular strategy under the specified scenario. The FDIC agrees that there is a necessary element of judgment in determining whether an identified strategy meets the goals of the rule as expressed in the first prong of the credibility standard. The application of judgment in the development of the identified strategy is appropriate given the diversity among the group A CIDs. A well-reasoned and well-supported identified strategy prepared by a group A CIDI will provide the FDIC useful information in assessing its options when confronted with an actual failure scenario.

One comment pointed to potential challenges in the element of the first prong that requires that the resolution plan address the potential risk of adverse effects on U.S. economic conditions or financial stability. Some CIDs have critical operations that are important to financial stability identified in their affiliates' DFA resolution plans, may be highly interconnected with other financial institutions, may have dominant market share in certain geographic regions or market segments, or their resolution could be disruptive to the U.S. economy or financial stability in other ways. The requirement that the resolution plan address the potential risk of adverse effects on U.S. economic conditions or financial stability is intended to require that the identified strategy take into account the potential for risks to U.S. economic conditions or financial stability arising from the execution of the strategy. Those risks should be described in the resolution plan, and the identified strategy should include specified actions that would mitigate those risks. It is a critical resolution planning objective that the CIDI can be resolved without the need for extraordinary support from the DIF and without reliance on the systemic risk

exception to the statutory least-cost requirement under the FDI Act.

As discussed in the proposal, the FDIC has considered the particular challenges with respect to the requirement that the identified strategy address the potential for risks to U.S. economic conditions or financial stability for the CIDs that are part of the largest and most systemic and interconnected U.S. banking organizations, specifically the group A CIDs that are subsidiaries of U.S. GSIBs. This category of firms comprises the U.S. banking organizations that pose the greatest risk to U.S. financial stability. The FDIC is aware of progress made by the U.S. GSIBs in the development of DFA resolution plans, including their adoption of an SPOE strategy for the resolution of the firm pursuant to which any subsidiary U.S. IDI that is a material entity remains open and operating. Each of these firms has also made progress in increasing the range of scenarios in which that strategy may be actionable and effective through structural and operational changes. Moreover, certain enhanced prudential standards that support resolvability apply only to the U.S. GSIBs.

Despite this progress, the availability or success of an SPOE strategy cannot be ensured in all circumstances, and the possibility of a resolution of a CIDI that is a subsidiary of a U.S. GSIB cannot be eliminated. The FDIC believes that it is appropriate to require group A CIDs within these banking organizations to develop comprehensive resolution plans that include an identified strategy that meets the requirements of the first prong of the credibility standard to support the FDIC's resolution readiness in the event that such a CIDI should fail. While these CIDs may have a particular challenge in addressing the risks their identified strategy may present to the U.S. economy and financial stability, where the DFA resolution plan of the CIDI's parent company contains relevant analysis and information with respect to the risk of potential adverse effects on U.S. financial stability arising from the failure of a subsidiary group A CIDI, the inclusion of that information by cross-reference is permitted under (c)(6). In addition, where the strategy for the rapid and orderly resolution of a U.S. GSIB in its DFA resolution plan does not include the resolution of the CIDI under the FDI Act, that strategy may reasonably be identified as a mitigant to the systemic risk, if any, posed by the failure of the CIDI under the FDI Act.

Full Resolution Submission Review and Credibility Determination

The proposal described a process for full resolution submission review and credibility assessment. Like the proposal, the final rule makes no change to the proposed rule with respect to coordination with supervisors related to the review process. The FDIC will review a full resolution submission in consultation with the appropriate Federal banking agency for the CIDI and for its parent company. If after consultation with any such appropriate Federal banking agency (or agencies), the FDIC determines that a CIDI's full resolution submission is not credible, the FDIC will notify the CIDI in writing of such determination. This written notice will include a description of the material weaknesses in the full resolution submission that resulted in the determination.

With respect to the full resolution submission review and the credibility determination process, two commenters emphasized the importance of the FDIC providing timely, clear, and consistent feedback to CIDs, with one noting that feedback should be provided at least 12 months before the next submission is due. This comment also suggested that the FDIC should institute an intermediate level of feedback between informal feedback and a formal weakness determination to precede a non-credibility finding.

The FDIC agrees that timely and clear feedback is an important part of the review process. The extension of the submission cycle to three years for most CIDs will provide additional assurance of sufficient time to incorporate feedback into the next full resolution submission. The FDIC anticipates that full resolution submissions will improve through an interactive and iterative process, and the FDIC recognizes that there should be multiple communications between the FDIC and the CIDs to improve the full resolution submissions. While the final rule, like the proposal, does not establish a fixed timing requirement for the delivery of feedback to CIDs, the FDIC will review full resolution submissions promptly and endeavor to give feedback identifying material weaknesses or significant findings within one year of the full resolution submission date. Any additional observations or other feedback, for instance following engagement, that would impact the next full resolution submission would be given at least 270 days before that submission is due.

The FDIC received one comment recommending that any feedback on

resolution plans should be treated as confidential supervisory information, except to facilitate coordination between home and host country resolution planning, where applicable. The FDIC received another comment recommending that the FDIC should commit to publishing all future feedback letters, including any that describe weaknesses resulting in a non-credible determination, with confidential supervisory information redacted. In the past, the FDIC has not made public the feedback letters on resolution submissions under the 2012 rule, as these letters may have relied on or disclosed confidential supervisory information. The FDIC has also considered that redacted letters may be incomplete and misunderstood and has treated the letters in a confidential manner, similar to supervisory letters. Any decision with respect to disclosure of feedback letters in the future will consider the confidential nature of any information, as well as the public interest.

The FDIC considered the comment recommending an intermediate level of feedback between informal feedback and a finding of a material weakness. The FDIC also considered the approach taken in reviews and feedback for DFA resolution plans, which includes an intermediate level of feedback. The FDIC believes that there is utility in providing feedback that requires correction with an appropriate level of urgency, but that does not trigger the immediate corrective actions spelled out in paragraph (f)(3). Consequently, the final rule establishes the concepts of material weaknesses and significant findings.

A material weakness is an aspect of a CIDI's full resolution submission that the FDIC determines individually or in conjunction with other aspects fails to meet the credibility criteria described in § 360.10(f)(1). The FDIC must identify one or more material weaknesses in determining a CIDI's full resolution submission is not credible. The final rule requires that within 90 days of receiving a notice by the FDIC pursuant to § 360.10(f)(2) or such shorter or longer period as the FDIC may determine, the CIDI must resubmit a revised full resolution submission, or such other information or material as specified by the FDIC, that addresses any material weaknesses identified by the FDIC and discusses in detail the revisions made to address such material weaknesses. This is consistent with the proposal, with a clarification that in some cases, a full resolution submission may not be required and the FDIC may

identify other information or material responsive to the material weakness.

Under the final rule, a significant finding is a weakness or gap that raises questions about the credibility of a CIDI's full resolution submission but does not rise to the level of a material weakness. If a significant finding is not satisfactorily explained or addressed before or in the CIDI's next full resolution submission, it may be found to be a material weakness in the CIDI's next full resolution submission. To clarify how the CIDI intends to address the significant findings by the next full resolution submission, the FDIC may require a time-bound project plan from the CIDI that outlines the actions the CIDI will be taking in the interim period to assure that the significant finding is addressed in a timely manner. In some cases, project plans may also be used as a tool to clarify how the CIDI intends to address material weaknesses. The final rule makes clear that the FDIC may identify an aspect of a CIDI's full resolution submission as a material weakness even if such aspect was not identified as a significant finding in an earlier full resolution submission. The FDIC must notify the CIDI in writing of any significant findings that are identified in the full resolution submission.

The difference between a material weakness and a significant finding is one of degree of severity. A material weakness is more likely to be a weakness in the full resolution submission that would significantly impact the FDIC's ability to undertake an efficient and effective resolution of the CIDI or would increase the risk of a disorderly and value-destructive resolution if not promptly corrected. A significant finding would more likely be feedback that goes to the completeness, sufficiency, and thoroughness of information provided or the adequacy of a capability demonstrated, that could affect the resolution of the CIDI and should be addressed, but is not of the same level of impact and urgency as a material weakness.

Other observations that are not material weaknesses or significant findings may be included in the feedback letter or may be provided in other communications throughout the full resolution submission review, capabilities testing, and engagement cycle. Those observations are also intended to provide useful feedback to the CIDs about areas of focus for further development of their full resolution submissions.

The FDIC received two comments that suggested the FDIC should provide general guidance to CIDs, with one

noting that such guidance could cover common issues and best practices following each review cycle. Other commenters suggested additional guidance or specificity with respect to identification of expected capabilities. The final rule is intended to be comprehensive and supersedes the 2012 rule and all prior guidance. In the event the FDIC determines, based on review of full resolution submissions and engagement with the CIDs, that additional general guidance may be helpful in addition to firm-specific feedback, the FDIC may consider providing such guidance at that time.

Another comment suggested that the FDIC provide a list of identified strategies that are presumptively credible. That approach would be inconsistent with the goal of the rule to obtain the insight and analysis of each group A CIDI as to the approach to resolution that best fits with their organization and business structure. The FDIC expects to give appropriate feedback, if needed, on a CIDI's identified strategy, consistent with the interactive and iterative process described above to improve full resolution submissions and the FDIC's resolution readiness.

Engagement and Capabilities Testing

The final rule retains the proposed approach to engagement and capabilities testing, without substantive change, but with some modifications to the organization of the content intended to reflect that engagement and capabilities testing are complementary parts of the review and evaluation process. The changes also clarify the process and identify the communications relative to both engagement and capabilities testing.

The FDIC received several comments with respect to engagement and capabilities testing. These comments generally focused on the process, the timing of notices, the scope of engagement and capabilities testing, and the approach to enforcement, including to ensure the FDIC's approach to resolution planning is sufficiently collaborative. One of these comments also noted that CIDs—especially, group B CIDs—will need time to build, improve, and test capabilities prior to undergoing capabilities testing with the FDIC, and suggested capabilities testing should not occur during a CIDI's initial submission cycle under the final rule.

The final rule retains the proposed requirements with respect to engagement between the FDIC and a CIDI, including that each CIDI must provide the FDIC such information and access to personnel of the CIDI that have

sufficient expertise and responsibility to address the informational and data requirements of the engagement. The final rule makes clear that the FDIC will provide timely notification of the scope of any engagement. Because the appropriate advance notice of an engagement will depend on the parameters of the engagement, the final rule does not specify a time period for such a notification. In the past, the FDIC has provided four to eight weeks' advance notice of any engagement and has taken into account scheduling considerations for the CIDs, such as other scheduled examinations and supervisory requirements, and expects to continue that practice. The final rule also makes clear that the FDIC will communicate with the CID after engagement. The form and content of that communication are not specified in the rule; in general, the FDIC expects to communicate observations from the engagement. In some cases, engagement will inform the review of the full resolution submission itself and engagement findings may support or address findings from the review process and be incorporated in the findings of weaknesses or non-credibility described above.

Engagement may take place at any time to provide additional insights to the FDIC and to inform areas of interest for future full resolution submissions. It may also be the case that engagement takes place after the FDIC has provided the CID with written notice of its determination with respect to the credibility assessment described above.

In some cases, for instance, where an IDI recently has become a CID or changed from a group A CID to a group B CID, engagement may take place before the initial full resolution submission, to provide information on particular resolution matters or areas of future submission content. The FDIC expects that engagement will be useful to the CIDs by providing a better understanding of the areas of particular interest to the FDIC with respect to its resolution responsibilities, and will help the FDIC to better understand the information in the full resolution submissions and the resolution challenges for a specific CID as well as mitigants to those challenges.

The final rule also adopts without change the proposed requirement that each CID may be required to demonstrate through capabilities testing that it can in fact perform the capabilities described in a full resolution submission, necessary for an identified strategy or required under the rule, and that these capabilities are adaptable to a range of scenarios. The

FDIC expects capabilities testing to be an important part of its full resolution submission review process and will begin capabilities testing in the first review cycle. While in some cases time may be necessary to develop capabilities, early assessment is an important first step in that process.

As with engagement, the final rule makes clear that the FDIC will provide timely notification of the scope of any capabilities testing. As with engagement, the final rule does not specify a time period for such a notification; in some cases, short notice of the capabilities test may be an intended feature of the exercise. However, the FDIC will give notice that is appropriate to the nature of the capabilities testing, and, as with engagement, will take into account scheduling considerations for the CIDs as noted above. As with engagement, after completion of the capabilities test the FDIC may communicate observations, or the information from the capabilities test may contribute to a letter with findings.

Generally, the FDIC anticipates that capabilities testing will be conducted concurrently with the full resolution submission review process and will be conducted across a cohort of CIDs.

Two commenters indicated the FDIC should provide CIDs with a comprehensive list of capabilities it expects a CID to maintain and a description of minimum standards expected for each capability. While the proposed rule was not prescriptive with respect to capabilities, it contained the express requirement that a CID's capabilities are sufficient to support key elements, namely, capabilities necessary to ensure continuity of critical services in resolution, the marketability of franchise components, and, with respect to group A CIDs, the production of valuations needed in assessing the least-cost test. In addition, an identified strategy in a resolution plan for a group A CID must be supported with observable and verifiable capabilities, among the other requirements of the second prong of the credibility standard.

The preamble to the proposal also provided additional context with respect to capability expectations for some or all CIDs that can reasonably be inferred from the content requirements of the full resolution submission as described in the proposal. For example, a requirement to map information clearly implies expectation of a mapping capability; and requirements to identify key depositors, critical services support, or key personnel require the capabilities to support that identification. Examples of the capabilities that a CID could be

required to demonstrate could include identification of key employees and critical services, as well as capabilities to meet requirements with respect to mapping, such as mapping critical services to material entities. The FDIC might also test capabilities that are necessary to key elements of the full resolution submission content, such as continuity of operations, or marketing of a franchise component or the IDI franchise. An example of such a capabilities test might be the establishment of a virtual data room for one or more franchise components or for the IDI franchise as a whole. The nature of this testing would be tailored to the requirements applicable to each CID. For example, while a group A CID may be asked to demonstrate its ability to execute capabilities necessary to its identified strategy, or demonstrate necessary capabilities for valuation, the focus for group B CIDs would be more likely on informational requirements, such as the ability to produce informational items and referenced supporting documents within a specified timeframe.

The final rule retains the provisions of the proposal with respect to capabilities with one change, addressed in the discussion of franchise components above.

While the FDIC generally expects that engagement or capabilities testing with a particular CID would occur no more than once during the three-year or two-year submission cycle, as applicable, the FDIC also believes that it is important to preserve the flexibility to undertake engagement and capabilities testing with a CID as frequently as needed and whenever prudent, based on the circumstances of the particular CID. In some instances, no engagement or capabilities testing may be necessary during a submission cycle, while in other cases, such as after changes at the CID or as the result of varying economic conditions, more frequent engagement and capabilities testing may be warranted. Because informational filings by group B CIDs do not include the development of an identified strategy and other elements of a resolution plan, the FDIC expects the engagement and capabilities testing with group B CIDs will be a key component of its resolution planning for such firms and expects to conduct engagement and capabilities testing with most group B CIDs in each cycle. In addition to engagement and capabilities testing, the FDIC could also have other interactions with CIDs, such as questions during the full resolution submission review process or

conversations regarding changes to resolvability or updates to information.

Finally, the final rule eliminates the specific reference to enforcement of the engagement and capabilities testing requirements that was included in this section as proposed. The FDIC received several comments expressing concern about implications of the specific reference to enforcement with respect to engagement and capabilities testing as proposed, and suggesting that further process is needed to challenge the specific enforcement powers relating to capabilities testing. The inclusion of enforcement language in this paragraph may have given the impression that engagement and capabilities testing might lead to specific enforcement actions that are separate from enforcement of compliance with the rule overall and from the application of the credibility standard to full resolution submissions. The FDIC agrees with commenters that the resolution planning process benefits from ongoing communication between the FDIC and CIDs, and an interactive and iterative process to improve full resolution submissions and the FDIC's resolution readiness. The engagement and capabilities testing requirements are important components of the overall requirements of the rule to meet the goal of ensuring resolution readiness based on credible full resolution submissions, information, and analysis. Consequently, the FDIC has eliminated the specific reference to enforcement when addressing engagement and capabilities testing and will instead rely on the overall enforcement provision in § 360.10(j) for all requirements of the rule.

G. No Limiting Effect on FDIC

The final rule retains the proposed provision that no full resolution submission provided pursuant to this section will be binding on the FDIC as supervisor, deposit insurer, or receiver for a CID, or otherwise require the FDIC to act in conformance with such full resolution submission. The final rule has been revised to make this provision applicable to interim supplements as well as full resolution submissions.

Financial Information

The final rule retains the proposed provision that requires a CID's full resolution submission use, to the greatest extent possible, financial information as of the most recent fiscal year-end for which the CID has financial statements or, if financial information from more recent financial statements would more accurately reflect the CID's operations as of the

date of the submission, financial information as of that more recent date. As addressed in the discussion of interim supplements above, the final rule has been revised to make this provision applicable to interim supplements as well as full resolution submissions.

Indexing of Information and Analysis to Full Resolution Submission and Interim Supplement Content Requirements

The final rule adopts the proposed requirement that a CID's full resolution submission and interim supplement include an index of each content requirement required to be included in that full resolution submission or interim supplement to every instance of its location in the full resolution submission or interim supplement.

Combined Full Resolution Submission or Interim Supplements by Affiliated CIDs

The final rule adopts without change the proposed provision to allow CIDs that are affiliates to submit a single, combined full resolution submission or interim supplement, so long as all affiliated CIDs submitting the combined submission or supplement are within the same CID group, whether group A or group B. The combined full resolution submission or interim supplement must satisfy the content requirements for each CID's separate full resolution submission or interim supplement, as applicable, and the CIDs must ensure that the portions of a combined full resolution submission or interim supplement for each CID can be readily identified.

H. Form of Full Resolution Submissions; Confidential Treatment of Full Resolution Submissions and Interim Supplements

The final rule requires that each CID divide its full resolution submission into a public section and a confidential section and describes the required content of a public section. This section also provides the confidentiality provisions of the proposed rule. One commenter recommended that the FDIC generally increase the amount of information disclosed in the public portion of resolution submissions. The FDIC agrees that the public portions should be robust and should usefully address all of the required elements. The FDIC believes that the proposal included the appropriate required elements for the public portion and the paragraph was adopted as proposed with no material change.

I. Extensions and Exemptions

The final rule adopts without change the proposed provision that the FDIC, on its own initiative or upon written request, may extend, on a case-by-case basis, any of the rule time frames or deadlines and exempt a CID from one or more of the requirements of the rule. One commenter recommended including a process for a CID to request content exemptions where certain content elements were not important to that CID's resolution. One commenter requested that the FDIC expressly note that inapplicable content should be excluded. The final rule incorporates the requirements that the FDIC believes are appropriate to group A CIDs and group B CIDs. To the extent that certain elements are less significant to a CID because of its structure, organization, business strategy, or other factors, the CID can and should adjust its approach to those content elements. For instance, a CID with no cross-border activities would not provide any information other than the confirmation that there are no such activities with respect to that requirement. Accordingly, the FDIC did not incorporate a prescribed exemption process, but retained the flexibility to provide exemptions to one or more content elements of the rule, consistent with the proposal.

J. Enforcement

Consistent with the proposed rule, the final rule expressly provides that violating any provision of this section constitutes a violation of a regulation and may subject the CID to enforcement actions under 12 U.S.C. 1818, including § 360.10(t) thereunder.

IV. Expected Effects

This final rule amends and restates the 2012 rule, as discussed in more detail above. It establishes two tiers of submission requirements to reflect the different sizes and complexity of CIDs. Group A CIDs are required to submit resolution plans that comply with all of the content requirements of the final rule, including the development of an identified strategy for the resolution of the CID, and to participate in engagement and capabilities testing. Group B CIDs are required to submit an informational filing containing information on resolution planning and readiness, and to participate in engagement and capabilities testing. The following describes the expected costs and benefits of this final rule as it applies to the groups of CIDs, and other economic impacts.

As of the quarter ending March 31, 2024, the FDIC insured 4,577 depository

institutions. Of these, 33 are group A CIDs that reported total average assets of \$100 billion or more over their four most recent Consolidated Reports of Condition and Income, and 12 are group B CIDs that reported total assets of at least \$50 billion, but less than \$100 billion, over their four most recent Consolidated Reports of Condition and Income. In the aggregate, these 45 CIDs held a combined \$17.951 trillion in total assets, accounting for about 74% of total U.S. banking industry assets.¹⁹

A. Review of Comments

The FDIC received several comments related to its analysis of the expected effects of the NPR. One commenter indicated that the NPR would substantially add to the time and resources required to prepare IDI resolution plans. Another two commenters argued that the analysis of the compliance burden of the NPR significantly understates the cost of the burden, with one noting that the analysis understates the true cost since it only includes internal costs to the IDI and fails to include the costs of outside lawyers, accountants, and risk management specialists that may be involved with resolution planning. A fourth commenter suggested that the estimated time required to develop an IDI's full resolution submission is not unreasonable and the estimated cost of compliance would be substantially less than the costs of potential bank failures and banking crises.

The FDIC has carefully reviewed the burden associated with the compliance requirements for each element in light of changes to the final rule and in consideration of the comments received. Recordkeeping, reporting, and disclosure requirements, like all compliance costs, may vary across institutions and the FDIC's compliance estimates associated with the Paperwork Reduction Act (PRA) are meant to be overall averages. The FDIC does not have the detailed data that would permit it to precisely estimate the quantitative effect of the final rule for every CID. The estimated labor hours needed to comply with certain aspects of the rule are based on the FDIC's extensive experience with resolution plan submissions and estimating associated burden. Absent any additional data, the FDIC believes the estimates of burden hours are reasonable, considering the recordkeeping, reporting, and disclosure requirements of the final rule.

The FDIC received one comment relating to its estimate of the costs of switching from a three-year to a two-year submission cycle, which stated that the FDIC underestimates the costs associated with a two-year submission cycle when weighing the proposal's burdens and benefits. Upon further consideration, the FDIC is finalizing a three-year submission cycle for most group A CIDs and the group B CIDs, as discussed previously.

Certain changes made to the final rule, as compared to the proposal, would result in a change to the economic effect. Those are described below.

B. Changes From the Proposed Rule to the Final Rule

Group A CIDs

Group A CIDs in the final rule are defined as IDIs with \$100 billion or more in total assets based upon the average of the institution's four most recent Consolidated Reports of Condition and Income. As of the quarter ending March 31, 2024, 33 IDIs reported total average assets of \$100 billion or more over their four most recent Consolidated Reports of Condition and Income. Therefore, for the purposes of this analysis, the FDIC estimates that 33 FDIC-insured depository institutions would be classified as group A CIDs under the final rule. In aggregate, these 33 group A CIDs held a combined \$17.10 trillion in total assets, accounting for about 71 percent of total U.S. banking industry assets.²⁰

Key Changes to the Final Rule Affecting Group A CIDs

The final rule would make certain changes from the proposal which would materially affect the requirements of the rule with respect to group A CIDs.

First, most group A CIDs would be required to file resolution plans on a triennial, rather than a biennial basis as proposed, with interim supplements expected each year where a resolution plan is not filed. This change means that these group A CIDs will file fewer resolution plans over time and a greater number of interim supplements. Specifically, over a six-year period, each group A CID would have been expected to file three resolution plans and three interim supplements under the proposed rule and would be expected to file two resolution plans and four interim supplements under the final rule. This change would reduce the estimated economic effect of the final

rule on the 24 group A CIDs that are triennial filers.

The final rule would retain the biennial filing cycle for the nine group A CIDs that are affiliated with U.S. GSIBs, but would make a change that would impact the expected frequency of submission of interim supplements for these biennial filers. Under the final rule, the nine biennial filers would not be required to submit interim supplements in the calendar year in which they file resolution plans under the rule or in the calendar year in which their affiliates submit a DFA resolution plan. DFA resolution plans submitted by these banking organizations are also on a biennial cycle. Because resolution plans under the final rule and DFA resolution plans are expected to be submitted in alternating years, these nine CIDs would not be expected to submit interim supplements under the final rule. This would reduce the estimated economic effect of the final rule for these biennial filers as compared to the proposal.

In light of the changes in filing cycle frequency in the final rule, the FDIC expects to place a greater emphasis on engagement and capabilities testing for the group A CIDs that are triennial filers. The FDIC estimates that this would result in a modest increase in compliance costs for the 24 group A CID triennial filers. Because the final rule does not change the submission cycle from the proposed rule for the nine biennial filers, there would be no change in the FDIC's expectation of engagement with those CIDs, and therefore the FDIC's estimate compliance costs associated with resolution plan filings for these CIDs would remain unchanged.

Group B CIDs

Group B CIDs are defined as IDIs with \$50 billion or more in total assets but less than \$100 billion in total assets, based upon the average of the institution's four most recent Consolidated Reports of Condition and Income. As of the quarter ending March 31, 2024, 12 IDIs reported total average assets of at least \$50 billion, but less than \$100 billion, over their four most recent Consolidated Reports of Condition and Income. Therefore, the FDIC estimates that 12 IDIs would be classified as group B CIDs under the final rule. In aggregate, these 12 group B CIDs held a combined \$849 billion in total assets, accounting for about 3.51 percent of total U.S. banking industry assets.²¹

¹⁹ FDIC Consolidated Reports of Condition and Income data as of March 31, 2024.

²⁰ FDIC Consolidated Reports of Condition and Income data as of March 31, 2024.

²¹ FDIC Consolidated Reports of Condition and Income data as of March 31, 2024.

Key Changes to the Final Rule Affecting Group B CIDs

Under the final rule, all group B CIDs would be required to submit informational filings on a triennial, rather than on a biennial basis as proposed, with interim supplements expected each year where an informational filing is not submitted. This change means that group B CIDs will file fewer informational filings over time and a greater number of interim supplements. Specifically, over a six-year period, each group B CIDI would have been expected to file three informational filings and three interim supplements under the proposed rule and would be expected to file two informational filings and four interim supplements under the final rule. This change would reduce the estimated economic effect of the final rule on the 12 group B CIDs.

Other Changes to the Proposal

In addition to the specific changes discussed above, the final rule contains several changes to individual content elements to be included in full resolution submissions. These modifications to the proposal are discussed in detail above. They include changes that result in modest decreases in the required content, such as changes to the valuations element, the use of year-end data for interim supplements, the adoption of a change to the definition of material entity, and the reduction of certain content elements relative to franchise components for informational filings. The modifications also include changes that result in modest increases in the required content, such as the requirement for a description of material changes in interim supplements and informational filings, the identification of key communications personnel as part of the communications playbook, the requirement for a description of the methodology for the identification of key depositors, and the identification of regulators and other authorities with respect to cross-border activities. Taking into account these and other elements that both increase and decrease content requirements, the FDIC has determined that there is no net change in estimated compliance costs with respect to the development of resolution plans, informational filings, or interim supplements, other than those related to the changes to submission frequency discussed above.

C. Marginal Effect of Changes Compared to the 2012 Rule

The final rule would have four primary effects on CIDs compared to the 2012 rule: (1) change in filing frequency for group A CIDs affiliated with U.S. GSIBs; (2) the establishment of an interim supplement requirement; (3) changes in full resolution content requirements for group A CIDs; and (4) changes in full resolution submission requirements for group B CIDs. The FDIC analyzed expected filings by CIDs over a six-year period beginning in 2025, the year in which the first submissions are expected to be made under the final rule, and assumes that the total assets reported by existing individual CIDs for the quarter ending March 31, 2024 would remain constant throughout the period of analysis, notwithstanding assumptions made by the FDIC on the number of new group A CIDs and group B CIDs in each filing cycle (discussed below). For the purposes of this analysis, the FDIC generally assumes that compliance costs are directly proportional to the total consolidated assets of the CIDI. While asset size is not a direct measure of complexity, the FDIC believes that asset size is positively correlated with the amount of compliance time necessary for a CIDI to complete full resolution submissions and interim supplements under this final rule. The following discussion addresses each of these primary effects to illustrate their marginal contribution to the aggregate effect.

Marginal Effect of Changes to the Biennial Filing Cycle for Group A CIDs Affiliated With U.S. GSIBs

As discussed above, the final rule would adjust the filing cycle for all group A CIDs that are affiliated with U.S. GSIBs from the current triennial cycle to a biennial cycle. Of the 33 group A CIDs identified above, nine are affiliated with U.S. GSIBs. To isolate the effect of the potential change from a triennial cycle to a biennial cycle on these CIDs, the FDIC compared estimated reporting compliance costs of the current triennial cycle under the 2012 rule,²² to the costs of those same compliance requirements on a biennial basis for these nine CIDs. Over the six-year period of analysis, the FDIC estimates that the labor hours expended by group A CIDs that are affiliated with U.S. GSIBs would increase by an average of 107,000 hours annually in order to comply with a biennial cycle. Using a wage estimate of \$118.14 an

hour,²³ the FDIC estimates that the change from a triennial cycle to a biennial cycle would result in average additional costs of approximately \$12.6 million annually for the nine group A CIDs affiliated with U.S. GSIBs.

Marginal Effect of the Introduction of the Interim Supplement Requirement

The final rule introduces a requirement for group A CIDs and group B CIDs to submit an interim supplement in the years that they do not file a full resolution submission. As discussed above, the final rule exempts group A CIDs that are biennial filers from this requirement in years where they file a DFA resolution plan. Because the FDIC assumes that submission dates for the DFA resolution plans and the full resolution submissions under the final rule will be in alternate years for the biennial filers, it is not expected that these nine CIDs will file interim supplements.

The FDIC estimates that the interim supplement will pose 24 labor hours per billion dollars in assets on group A CIDs that are not affiliated with U.S. GSIBs and group B CIDs. Using this estimate over the six-year period of analysis, the requirement for interim supplements would result in an estimated average annual increase of approximately 102,000 hours and 17,000 hours for group A CIDI triennial filers and group B CIDs, respectively. Using a wage estimate of \$118.14 an hour,²⁴ the FDIC estimates that the increase in reporting burden hours for group A CIDI triennial filers and group B CIDs submitting interim supplements will result in average additional annual costs of approximately \$12.1 million annually and \$2 million, respectively. Thus, the FDIC estimates the total average impact of this specific requirement to be approximately 119,000 hours annually, and about \$14.1 million annually.

²³ The FDIC's estimated allocations of labor associated with the reporting compliance burden for full resolution submissions in the final rule (for group A CIDs and group B CIDs) reflects an assumption that the majority will be attributable to financial analysts (including accountants and risk management specialists), with executives and managers, and legal occupations accounting for the remaining balance. The estimated weighted average hourly compensation cost of these employees are found by using the 75th percentile hourly wages reported by the Bureau of Labor Statistics (BLS) National Industry-Specific Occupational Employment and Wage Estimates for the relevant occupations in the Depository Credit Intermediation sector, as of May 2022. These wages are adjusted to account for inflation and non-monetary compensation rates for health and other benefits, as of March 2024, to provide a comprehensive estimate of overall compensation.

²⁴ See footnote 23.

²² See https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202111-3064-003.

Marginal Effect of Proposed Changes in Full Resolution Submission Content for All Group A CIDs

The FDIC's estimates of labor hours needed by group A CIDs to comply with the reporting requirements of the final rule for first-time full resolution submissions remain unchanged at 16,000 hours. However, the FDIC has adjusted its estimate for subsequent full resolution submissions by group A CIDs that are not affiliated with U.S. GSIBs to 73 hours per billion dollars in assets. For group A CIDs that are affiliated with U.S. GSIBs, the FDIC estimates that they would incur 72 hours of burden per billion dollars in assets for subsequent full resolution submissions. To maintain consistency with the FDIC's estimates under the 2012 rule, the estimate of labor hours for both engagement and capabilities testing was included in the prior estimates of labor hours per billion in total assets for resolution plan content requirements of group A CIDs. Thus, the difference in the burden estimate for group A CIDs that are triennial filers is because in light of the change in submission cycle under the final rule for these CIDs, the FDIC expects more engagement with these filers. Group A CIDs that are affiliated with U.S. GSIBs, conversely, will file biennially under the final rule and will have somewhat less engagement between full resolution submissions.

Over the six-year period of analysis, beginning in 2025, the FDIC assumes there will be three first-time group A CIDs that will file full resolution submissions in each triennial filing cycle. This estimate is based on the FDIC's review of Consolidated Reports of Condition and Income data over the three-year period from 2021 through 2023.²⁵ The FDIC analyzed the effect of changes in these other requirements for group A CIDs by assuming the same filing frequency exists under the 2012 rule and the final rule, and then compared estimated compliance costs. As previously discussed, the final rule changes the filing frequency for group A CIDs affiliated with U.S. GSIBs as well as the full resolution submission content and other requirements for group A CIDs. The preceding subsection of this analysis presented the estimated effects of the final rule's amendments to the filing frequency for group A CIDs affiliated with U.S.

GSIBs; from triennial to biennial. To isolate the effects of the final rule's changes to the full resolution submission content and other requirements for group A CIDs, the FDIC assumes that group A CIDs affiliated with U.S. GSIBs file biennially, rather than triennially, and then calculate estimated compliance costs for group A CIDs associated with the content requirements of the 2012 rule. The analysis then compares the estimated compliance costs for group A CIDs associated with the content requirements of the 2012 rule with the estimated compliance costs associated with the content requirements established by the final rule.

For group A CIDs filing full resolution submissions in the next and subsequent filing cycles, the FDIC estimates that, over the six-year period of analysis, the changes in the final rule relating to the full resolution submission content requirements will result in an average increase in labor hours to comply with associated reporting requirements of approximately 128,000 hours annually. Using a wage estimate of \$118.14 an hour,²⁶ the FDIC estimates that the increase in reporting burden hours for group A CIDs due to changes to full resolution submission content requirements for group A CIDs will result in average additional costs of approximately \$15.1 million annually to all group A CIDs. Approximately 63 percent of this increase in estimated annual compliance costs can be attributed to the nine group A CIDs affiliated with U.S. GSIBs.

Marginal Effect of Proposed Changes in Full Resolution Submission Content for All Group B CIDs

The FDIC estimates that the labor hours needed by group B CIDs to comply with the reporting requirements of the final rule, for both first-time full resolution submissions and subsequent submissions, would be 7,200 hours and 67 hours per billion dollars in assets, respectively. To maintain consistency with the FDIC's estimates under the 2012 rule, the estimate of labor hours for both engagement and capabilities testing was included in the estimate of 67 hours per billion in total assets for group B CIDs.

The analysis of the estimated compliance costs of the final rule on group B CIDs is predicated on the assumption that all requirements under the final rule are new for the 12 group B CIDs, resulting in relatively high initial compliance efforts. Most CIDs that would be categorized as group B

CIDs under the final rule have not provided resolution submissions of any kind to the FDIC. For those CIDs that have filed previously, the significant passage of time since that filing, taken together with the significant changes to the applicable requirements for group B CIDs under the final rule, suggest that it is appropriate to consider them to be first-time filers for the purposes of assessing compliance costs in the first triennial cycle over the six-year period of analysis.²⁷ Accordingly, the 12 group B CIDs will be considered first-time filers for their initial full resolution submission under the final rule. In addition, over the six-year period of analysis, beginning in 2025, the FDIC assumes there will be five first-time group B CIDs that will file full resolution submissions in each triennial cycle, based on the FDIC's review of Reports of Condition and Income data over the three-year period from 2021 through 2023.

The FDIC estimates that, over the six-year period of analysis, the final rule would result in an average increase in reporting burden hours of approximately 35,000 hours annually. Using a wage rate of \$118.14 an hour,²⁸ the FDIC estimates that the increase in reporting burden hours for group B CIDs submitting informational filings will result in average additional costs of approximately \$4.1 million annually.

Total Estimated Effect on Reporting Compliance Costs to CIDs

Taken together, the total estimated marginal effect of the change to a biennial cycle for group A CIDs affiliated with U.S. GSIBs, submission content changes for all group A CIDs and group B CIDs, and requirements for interim supplements, over the six-year analysis period, would result in an average increase in reporting burden hours of approximately 389,000 annually. Using an estimated wage rate of \$118.14²⁹ per hour, this would amount to total additional estimated reporting costs for all CIDs of approximately \$46 million annually. By comparison, total average annual estimated reporting compliance costs of \$46 million are approximately 0.010 percent of total noninterest expenses across all CIDs.³⁰

²⁷ Of the 12 group B CIDs identified, only three have submitted resolution plans under the 2012 rule (in either 2015 or 2018).

²⁸ See footnote 23.

²⁹ See footnote 23.

³⁰ FDIC Consolidated Reports of Condition and Income data as of June 30, 2023 through March 31, 2024.

²⁵ CIDs that become group A CIDs in subsequent filing cycles (*i.e.*, the triennial filing cycle beginning in 2028) will have already filed full resolution submissions as group B CIDs, and thus are not considered first-time filers for the purposes of estimating burden.

²⁶ See footnote 23.

D. Effects on Insured Deposits and the Deposit Insurance Fund

As previously discussed, the final rule would increase the amount of information CIDs produce and furnish to the FDIC for the purposes of resolution planning. In the years since the adoption of the 2012 rule, the FDIC has learned which aspects of the resolution planning process are most valuable and gained a greater understanding of the resources that CIDs expend in meeting the requirements and expectations to comply with the 2012 rule. The FDIC does not have the information necessary to quantify the benefits to the DIF associated with the increase in the amount of resolution planning information for CIDs. However, the FDIC believes that requiring CIDs to regularly submit more information on their resolution readiness capabilities would be expected to reduce the costs to the DIF in the event of a failure of such an institution because this information would help the FDIC be more prepared to resolve these CIDs.

E. Additional Economic Considerations and Effects

Because some of the methodologies used to estimate reporting costs—for subsequent full resolution submissions and interim supplements—are based on the number of labor hours per billions of dollars in total assets, it is possible for a CID's estimated compliance cost to change solely due to fluctuations in asset size. The FDIC acknowledges that economic trends resulting in, or contributing to, changes in banking industry assets generally would have an impact on the estimates described above, but believes that these potential changes in compliance costs are likely to be modest relative to the size of the IDs affected by the final rule.

CIDs would likely incur some regulatory costs, in addition to the reporting costs presented above, to transition their internal systems and processes in order to comply with the final rule. The FDIC does not have access to information that would enable it to estimate such costs. However, the FDIC believes that such costs are likely to be small relative to the size of the IDs affected by the final rule.

Finally, the FDIC does not believe that any additional costs incurred as a result of the final rule would have significant adverse impact on the provision of banking services such as originating and servicing loans, processing payments, or

various financial market activities that the CIDs may be involved in. This analysis illustrates that estimated reporting costs in future years only comprise approximately 0.010 percent of current noninterest expenses³¹ for all CIDs.

F. Overall Effects

In summary, the FDIC believes that the final rule would result in public benefits by improving the FDIC's ability to effect timely and cost-effective resolutions of large, complex insured institutions. The FDIC estimates the final rule would result in average annual compliance cost increases of approximately \$46 million over the six-year analysis period—which spans two filing cycles (three for group A CIDs affiliated with U.S. GSIBs) under the final rule.

V. Alternatives Considered

The FDIC considered several alternatives while developing the final rule. The FDIC first considered leaving the 2012 rule unchanged. The FDIC rejected this alternative because it believes the final rule improves the value of submissions and provides additional clarity to CIDs regarding requirements by incorporating elements of prior guidance and taking into account the lessons learned from resolution planning under the 2012 rule. The final rule also provides a complete and clear set of requirements with respect to resolution planning submissions and the review and feedback process and bolsters and clarifies the FDIC's approach to engagement and capabilities testing in a manner useful to both the FDIC and CIDs.

Following review of comments on the proposed rule, the FDIC considered several alternatives in finalizing the rule. First, the FDIC considered finalizing the rule as proposed. Comments received identified certain areas where the rule could be strengthened and improved, particularly with respect to the process and timing of submissions and review of the full resolution submissions as discussed below.

The FDIC considered several options with respect to the timing of submissions. First, it considered retaining without change the proposed biennial cycle for all CIDs. It also

considered adopting a triennial cycle for all CIDs. Finally, it considered the approach adopted in this final rule by imposing a triennial cycle for most CIDs, and biennial filings for the group A CIDs affiliated with U.S. GSIBs. The FDIC believes that, for most CIDs, a triennial cycle, with interim supplements in the off-years, would be an appropriate balance between the burden on CIDs associated with more frequent filings and the public benefit in having timely and complete submissions. The final rule establishes a biennial cycle for group A CIDs that are affiliated with U.S. GSIBs. The FDIC believes the biennial filing would be appropriate for these CIDs, which are part of the largest and most systemic and interconnected U.S. banking organizations.

The approach to the timing of submissions adopted in the final rule also has the benefit of allowing the FDIC to have additional time between submissions for engagement with the CIDs that are triennial filers. The biennial filing schedule for all group A CIDs resulted in an expectation that engagement with those CIDs would be limited as a result of the increased time for preparation and review of full resolution submissions. The FDIC expects that the additional time for engagement will improve the FDIC's understanding of firm-specific resolution matters, and will provide additional opportunity for feedback and observations that may assist the CIDs in improving their full resolution submission in successive filings.

The FDIC considered several alternatives with respect to the timing of interim supplements. First, it considered retaining the proposed approach that would require an interim supplement in any year in which a full resolution submission is not required. Second, it considered not requiring an interim supplement for any CID that is an affiliate of a DFA resolution plan filer in a calendar year in which a DFA resolution plan is submitted. Finally, it considered the approach adopted in the final rule, which requires all CIDs, except the biennial filers, to provide an interim supplement in any calendar year in which a full resolution submission is not submitted. For the biennial filers, the final rule does not require an interim supplement in a calendar year in which a DFA resolution plan from the affiliated banking organization is submitted. This

³¹ FDIC Consolidated Reports of Condition and Income data as of June 30, 2023 through March 31, 2024.

alternative is an appropriate balance of costs and benefits, taking into account biennial filers' higher frequency of submissions under this rule, and the expected annual submission of resolution plans alternating between submissions under this rule and the DFA rule.

The FDIC considered other modifications to the proposal in response to comments, including changes to the identified strategy and other content elements. In each case, the FDIC weighed the proposed change against the alternative of adopting the proposal. The FDIC believes that the changes made, in the aggregate, do not have a significant impact on the cost of preparing the full resolution submissions and interim supplements, and have meaningful benefits in terms of improving the usefulness of the content of the submissions.

VI. Regulatory Analysis and Procedures

A. Paperwork Reduction Act

In accordance with the requirements of the PRA,³² the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

Comments Received

The FDIC received comments that appear to relate to the PRA. As stated

above, the majority of commenters suggested changes to reduce the costs of submission preparation for filers, including by adjusting the proposed submission cycle, narrowing the proposed scope and content requirements, and enhancing alignment with relevant resolution planning requirements of the DFA rule. Additionally, one commenter raised questions about the FDIC's burden estimate. The comments received and their respective responses are summarized in the above analysis.

The final rule modifies the current filing cycle cadence for group A CIDs that are affiliated with U.S. GSIBs from triennial to biennial, which will result in these CIDs sometimes filing multiple full resolution submissions across a given three-year PRA renewal cycle. On content, the final rule does not differ substantially from the proposed rule. The final rule retains the proposed rule's requirement for group A CIDs and group B CIDs to submit interim supplements to the FDIC in calendar years where they are not expected to file full resolution submissions, except in the case of the biennial filers who are also not expected to file in calendar years when they file DFA resolution plans. On engagement and capabilities testing, the final rule is broadly similar to the proposed rule. The change in submission cycle resulted in an increased expectation for engagement

with group A CIDI triennial filers, as discussed above. Therefore, the estimate for subsequent full resolution submissions for group A CIDs which are filing triennially has been increased from 72 hours per billion dollars in assets to 73 hours per billion dollars in assets, which would affect the estimates in Information Collection #2, described in table 1 below. For subsequent plan submissions for group A CIDs which are filing biennially, the estimate remains at 72 hours per billion dollars in assets.

The revisions for this Information Collection Renewal ("ICR") in the final rule represent a decrease of 182,238 hours from the PRA estimates in the proposed rule (771,975 hours).³³ This decrease is primarily due to the reversion to a triennial cycle for all CIDs except for group A CIDs that are affiliated with U.S. GSIBs, and the decision to exempt group A CIDs that are affiliated with U.S. GSIBs from the interim supplement requirement in calendar years when they file DFA resolution plans. The FDIC will revise this information collection as follows:

Title: Resolution Plans and Periodic Engagement and Capabilities Testing Required.

OMB Number: 3064–0185.

Affected Public: Large and Highly Complex Depository Institutions.

TABLE 1—SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0185]

Information collection (IC) (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Resolution Plan update by previous filer (biennial filer, group A), 12 FR 360.10(c)(1); 12 FR 360.10(d) (Mandatory).	Reporting (Annual, 2 year filing cycle).	3	1	³⁴ 89216:00	267,648
2. Resolution Plan update by previous filer (triennial filer, group A), 12 FR 360.10(c)(2); 12 FR 360.10(d) (Mandatory).	Reporting (Annual, 3 year filing cycle).	8	1	³⁵ 18100:58	144,808
3. Resolution Plan by new filer (group A), 12 FR 360.10(c)(3); 12 FR 360.10(d) (Mandatory).	Reporting (Annual, 3-year filing cycle).	1	1	16000:00	16,000

³² 44 U.S.C. 3501 *et seq.*

³³ The revisions for this ICR in the final rule represent an increase of 300,074 estimated annual burden hours from the PRA estimates in the 2021 collection (289,663 hours), and an increase of 16,946 estimated annual burden hours from the PRA estimates in the 2018 collection (572,791 hours).

³⁴ For the PRA renewal cycle corresponding with the expected effective date of the final rule—from 2025 through 2027—there will be a total of nine biennial filers, with total assets (as of the quarter ending March 31, 2024) of approximately \$11,152

billion. The FDIC estimates that these nine CIDs would incur 72 hours per billion dollars in assets of reporting burden under this IC, and that these nine ICs would file once during this three-year period. Therefore, the total burden is 802,944 hours (\$11,152 billion in assets * 72 hours per billion in assets = 802,944 hours) across this period, or 267,648 hours annually. At three respondents a year (9 biennial filers/3 years), this comes out to 89,216 hours per response.

³⁵ For the PRA renewal cycle corresponding with the expected effective date of the final rule—from 2025 through 2027—there will be a total of 24

triennial filers, with total assets (as of the quarter ending March 31, 2024) of approximately \$5,951 billion. The FDIC estimates that these 24 CIDs would incur 73 hours per billion dollars in assets of reporting burden under this IC, and that these 24 ICs would file once during this three-year period. Therefore, the total burden is 434,423 hours (\$5,951 billion in assets * 73 hours per billion in assets = 434,423 hours) across this period, or approximately 144,807.67 hours annually. At 8 respondents a year (24 triennial filers/3 years), this comes out to 18,100.96 hours per response, or 18,100 hours and 58 minutes per response.

TABLE 1—SUMMARY OF ESTIMATED ANNUAL BURDEN—Continued
[OMB No. 3064–0185]

Information collection (IC) (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
4. Informational Filing update by previous filer (group B), 12 FR 360.10(c)(2); 12 FR 360.10(d) (Mandatory).	Reporting (Annual, 3-year filing cycle).	1	1	³⁶ 00:00	0
5. Informational Filing by New Filers (group B), 12 FR 360.10(c)(3); 12 FR 360.10(d) (Mandatory).	Reporting (Annual, 3-year filing cycle).	6	1	7200:00	43,200
6. Interim Supplement, 12 FR 360.10(e) (Mandatory).	Reporting (Annual, 3-year filing cycle).	30	1	3920:00	117,600
7. Waiver Requests, 12 FR 360.10(i) (Required to obtain or retain a benefit).	Reporting (On Occasion)	1	1	01:00	1
8. Notice of extraordinary event, 12 FR 360.10(c)(4) (Mandatory).	Reporting (On Occasion)	4	1	120:00	480
Total Annual Burden (Hours) .....	.....	.....	.....	.....	589,737

Source: FDIC.

Note: The estimated annual IC time burden is the product, rounded to the nearest hour, of the estimated annual number of responses and the estimated time per response for a given IC. The estimated annual number of responses is the product, rounded to the nearest whole number, of the estimated annual number of respondents and the estimated annual number of responses per respondent. This methodology ensures the estimated annual burdens in the table are consistent with the values recorded in OMB's consolidated information system.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a final rule, to prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the final rule on small entities.³⁷ However, a final regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined “small entities” to include banking organizations with total assets of less than or equal to \$850 million.³⁸

³⁶ The estimated time per response for a group B CIDI that has filed previously under the final rule is 67 hours per billion dollars in total assets. However, for the PRA renewal cycle corresponding with the expected effective date of the final rule—from 2025 through 2027—the FDIC estimates that 0 group B CIDs will be subject to this requirement. For the purposes of estimating annual reporting compliance burden, all group B CIDs in this period are considered “new filers” and thus will file under IC #5. The FDIC expects that the 17 group B CIDs under IC #5 (rounded to six annually) would all file under IC #4 in the next three-year PRA renewal cycle, notwithstanding the number of group B CIDs that may fail, merge with other CIDs, or experience asset growth such that they no longer would be considered a group B CIDI at the time of their next filing. In recognition that, in future filing cycles, some group B CIDs will incur burden under this IC, the FDIC uses a placeholder estimate of 0 respondents to retain this information collection.

³⁷ 5 U.S.C. 601 *et seq.*

³⁸ The SBA defines a small banking organization as having \$850 million or less in assets, where an organization’s “assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See 13 CFR 121.201 (as amended by 87 FR 69118, effective December 19, 2022). In its determination, the “SBA

Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of 5 percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represent significant economic impacts for FDIC-supervised institutions. For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that this rule will not have a significant economic impact on a substantial number of small entities. As of the quarter ending March 31, 2024, the FDIC insured 4,577 depository institutions, of which the FDIC identifies 3,272 as a “small entity” for purposes of the RFA.³⁹

The final rule amends resolution submission requirements for IDIs with over \$50 billion in total average assets. Therefore, the final rule would apply only to institutions with \$50 billion or more in total average assets. As of the quarter ending March 31, 2024 there are no small, FDIC-insured institutions with \$50 billion or more in total average

counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.” See 13 CFR 121.103. Following these regulations, the FDIC uses an insured depository institution’s affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is “small” for the purposes of RFA.

³⁹ FDIC Consolidated Reports of Condition and Income data as of December 31, 2023 and March 31, 2024.

assets.⁴⁰ In light of the foregoing, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities supervised.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act⁴¹ requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner. The FDIC invited comments regarding the use of plain language in the proposed rule but did not receive any comments on this topic.

D. Riegle Community Development and Regulatory Improvements Act of 1994

Under section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),⁴² in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each FBA must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository

⁴⁰ FDIC Consolidated Reports of Condition and Income data as of December 31, 2023 and March 31, 2024.

⁴¹ Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

⁴² 12 U.S.C. 4802(a).

institutions, as well as the benefits of such regulations. In addition, section 302(b) of the RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.⁴³

E. Congressional Review Act

For purposes of the Congressional Review Act (5 U.S.C. 801 *et seq.*), the OMB makes a determination as to whether a final rule constitutes a “major rule.” If a rule is deemed a “major rule” by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication. The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.⁴⁴ The OMB has determined that the final rule is not a major rule for purposes of the Congressional Review Act and the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects in 12 CFR Part 360

Bank deposit insurance, Banks, banking, Holding companies, National banks, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR part 360 as follows:

PART 360—RESOLUTIONS AND RECEIVERSHIPS RULES

■ 1. The authority citation for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1811 *et seq.*, 1817(a)(2)(B), 1817(b), 1818(a)(2), 1818(t), 1819(a) Seventh, Eighth, Ninth, and Tenth, 1820(b)(3) and (4), 1820(g), 1821(d)(1), (4), (10)(C), and (11), 1821(e)(1) and (8)(D)(i), 1821(f)(1), 1823(c)(4), and 1823(e)(2).

■ 2. Revise § 360.10 to read as follows:

§ 360.10 Resolution plans required for insured depository institutions with \$100 billion or more in total assets; informational filings required for insured depository institutions with at least \$50 billion but less than \$100 billion in total assets.

(a) *Scope and purpose.* This section applies to insured depository institutions with \$50 billion or more in total assets. It requires a covered insured depository institution with \$100 billion or more in total assets (a group A CIDI, as defined in paragraph (b) of this section) to submit a resolution plan that should enable the FDIC, as receiver, to resolve the institution under 12 U.S.C. 1821 and 1823 in a manner that provides depositors timely access to their insured deposits, maximizes the net present value return from the sale or disposition of assets and minimizes the amount of any loss realized by the creditors in the resolution, and addresses risks of adverse effects on U.S. economic conditions or economic stability. Other covered insured depository institutions (group B CIDs, as defined in paragraph (b) of this section) are required under this section to submit to the FDIC an informational filing containing information relevant to the group B CIDI's resolution that will support the development of strategic options for resolution of the CIDI by the FDIC. This section also establishes the requirements regarding the submission of resolution plans and informational filings and their contents, as well as procedures for their review by the FDIC. This rule is intended to ensure that each group A CIDI develops a credible strategy to facilitate the FDIC's resolution of the institution across a range of possible scenarios and, with respect to each group A CIDI and each group B CIDI, the FDIC has access to all of the material information and analysis it needs to resolve efficiently the covered insured depository institution in the event of its failure.

(b) *Definitions.*

Affiliate has the same meaning as in 12 U.S.C. 1813(w)(6).

Appropriate Federal banking agency has the same meaning as in 12 U.S.C. 1813(q).

Biennial filer is defined in paragraph (c)(1) of this section.

Bridge depository institution has the same meaning as in 12 U.S.C. 1813(i)(2).

Capabilities testing is defined in paragraph (f)(7) of this section.

CIDI or covered insured depository institution means a group A CIDI or a group B CIDI.

Company has the same meaning as in 12 CFR 362.2(d).

Control has the same meaning as in 12 U.S.C. 1813(w)(5).

Core business lines means those business lines of the CIDI, including associated operations, services, functions, and support, that, in the view of the CIDI, upon failure would result in a material loss of revenue, profit, or franchise value of the CIDI.

Critical services means services and operations, including shared and outsourced services, that are necessary to continue the day-to-day operations of the CIDI, and, in the case of a group A CIDI, to support the execution of the identified strategy, and includes all services and operations that are necessary to continue any critical operation conducted by the CIDI that has been included in the most recent DFA resolution plan of the CIDI's parent company.

Critical services support means resources, including shared and outsourced resources, that are necessary to support the provision of critical services, including systems, technology infrastructure, data, key personnel, intellectual property, and facilities.

DFA resolution plan means a resolution plan filed by a CIDI's parent company under 12 U.S.C. 5365(d).

DIF means the deposit insurance fund established by 11 U.S.C. 1821(a)(4).

Engagement is defined in paragraph (f)(6) of this section.

Failure scenario means a scenario as described in paragraph (d)(2) of this section.

Foreign-based company means any company that is not incorporated or organized under the laws of the United States.

Franchise component means a business segment, regional branch network, major asset, material asset portfolio, or other key component of a CIDI's franchise that can be separated and sold or divested.

Full resolution submission means a resolution plan for a group A CIDI, and an informational filing for a group B CIDI.

Group A CIDI means an insured depository institution with \$100 billion or more in total assets, as determined based upon the average of the institution's four most recent Consolidated Reports of Condition and Income. An insured depository institution that is a group A CIDI remains a group A CIDI until it has less than \$100 billion in total assets for each of the institution's four most recent

⁴³ 12 U.S.C. 4802.

⁴⁴ See 5 U.S.C. 804(2).

Consolidated Reports of Condition and Income. In the event of a merger, acquisition of assets, combination, or similar transaction by an insured depository institution that causes it to exceed \$100 billion in total assets, the FDIC may alternatively consider, in its discretion, to the extent and in the manner the FDIC considers to be appropriate, one or more of the four most recent Consolidated Reports of Condition and Income of the insured depository institutions that will become a group A CIDI effective as of the date of the consummation of such merger, acquisition, combination, or other transaction.

Group B CIDI means an insured depository institution with at least \$50 billion but less than \$100 billion in total assets, as determined based upon the average of the institution's four most recent Consolidated Reports of Condition and Income. An insured depository institution that is a group B CIDI remains a group B CIDI until it is a group A CIDI or has less than \$50 billion in total assets, in either case, for each of the institution's four most recent Consolidated Reports of Condition and Income. In the event of a merger, acquisition of assets, combination, or similar transaction by an insured depository institution that causes it to have at least \$50 billion but less than \$100 billion in total assets, the FDIC may alternatively consider, in its discretion, to the extent and in the manner the FDIC considers to be appropriate, one or more of the four most recent Consolidated Reports of Condition and Income of the insured depository institutions that will become a group B CIDI effective as of the date of the consummation of such merger, acquisition, combination, or other transaction.

Identified strategy means the strategy chosen by a group A CIDI for its resolution plan as required pursuant to paragraph (d)(1) of this section, covering the time period from the point of failure to disposition of substantially all of the assets and operations of the group A CIDI through wind-down, liquidation, divestiture, or other return to the private sector.

IDI franchise means all core business lines and all other business segments, branches, and assets that constitute the CIDI and its businesses as a whole.

Informational filing means the full resolution submission submitted by a group B CIDI pursuant to this section.

Insured depository institution has the same meaning as in 12 U.S.C. 1813(c)(2).

Key depositors is defined in paragraph (d)(7)(v) of this section.

Key personnel means personnel tasked with an essential role in support of a core business line, franchise component, or critical service, or having a function, responsibility, or knowledge that may be significant to the FDIC's resolution of the CIDI. Key personnel may be employed by the CIDI, a CIDI subsidiary, the parent company, a parent company affiliate, or a third party.

Least-cost test means the process for determining the resolution strategy that is least costly to the DIF, as required under 12 U.S.C. 1823(c).

Material asset portfolio means a pool or portfolio of assets, such as loans, securities, or other assets that may be sold in resolution by the bridge depository institution or the receivership and is significant in terms of income or value to the CIDI.

Material change means a change in organization, operations, or strategic direction of the CIDI that results from an extraordinary event or other circumstance that could reasonably be foreseen to have a material effect on the resolvability of the CIDI. Such changes include, but are not limited to:

- (i) The identification of a new core business line;
- (ii) The identification of a new material entity or the de-identification of a material entity;
- (iii) Legal or functional organizational structure;
- (iv) Overall deposit structure;
- (v) Critical services or critical services support;
- (vi) The identification or de-identification of a franchise component;
- (vii) The acquisition or disposition of a material asset portfolio; or
- (viii) Cross-border elements.

Material entity means a company, a domestic branch, or a foreign branch as defined in 12 U.S.C. 1813(o) that is significant to the activities of a critical service or core business line, and includes all IDIs that are subsidiaries or affiliates of the CIDI.

Multiple-acquirer exit means an exit from a bridge depository institution through the sale of all or nearly all of the CIDI's IDI franchise to multiple acquirers, such as a regional breakup of the CIDI's IDI franchise or a sale of business segments to multiple acquirers, and may also include the wind-down or other disposition of franchise components, or material asset portfolios incidental to the divestitures of going concern elements, as applicable.

Parent company means the company that controls, directly or indirectly, an insured depository institution. In a multi-tiered holding company structure,

parent company means the top-tier of the multi-tiered holding company only.

Parent company affiliate means any affiliate of the parent company other than the CIDI and the CIDI's subsidiaries.

Payment, clearing, and settlement service provider (PCS service provider) is defined in paragraph (d)(16) of this section.

Qualified financial contract has the same meaning as in 12 U.S.C. 1821(e)(8).

Regulated subsidiary is defined in paragraph (d)(4)(v) of this section.

Resolution plan means the full resolution submission submitted by a group A CIDI pursuant to this section.

Subsidiary has the same meaning as in 12 U.S.C. 1813(w)(4).

Total assets has the meaning given in the instructions for the filing of Reports of Condition and Income.

Triennial filer is defined in paragraph (c)(2) of this section.

United States has the same meaning as the term State as defined in 12 U.S.C. 1813(a)(3).

Virtual data room means an online repository where information pertinent to a sale or disposition of a CIDI or its franchise components is maintained in a secure and confidential manner to facilitate, whether by the CIDI or the FDIC, such sale or disposition to one or more third party acquirers.

(c) *Full resolution submissions required*—(1) *Biennial filers*—(i) *Definition*. Biennial filer means a CIDI affiliate of a biennial filer, as defined in § 381.4(a)(1) of this chapter.

(ii) *Submission date*. Each biennial filer must provide a full resolution submission to the FDIC on or before the date that is two years after the date of its most recent full resolution submission (or first business day thereafter), unless it has received written notice of a different date from the FDIC. All biennial filers will receive a written notice specifying the date on which their initial full resolution submission or interim supplement is due, which will be at least 270 days after October 1, 2024.

(2) *Triennial filers*—(i) *Definition*. Triennial filer means all CIDs that are not biennial filers.

(ii) *Submission date*. Each triennial filer must provide a full resolution submission to the FDIC on or before the date that is three years after the date of its most recent full resolution submission (or first business day thereafter), unless it has received written notice of a different date from the FDIC. All triennial filers will receive a written notice specifying the date on which their initial full resolution

submission or interim supplement is due, which will be at least 270 days after October 1, 2024.

(3) *Full resolution submission by new CIDs.* An insured depository institution that becomes a CIDI after October 1, 2024, must submit its initial full resolution submission on or before the date specified in writing by the FDIC. Such date will occur no earlier than 270 days after the date on which the insured depository institution became a CIDI. A CIDI that transitions between groups will file a full resolution submission or interim supplement, as applicable, pursuant to the requirements applicable to its new filing group on or before the date that its next full resolution submission or interim supplement is due, unless it receives written notice of a different date from the FDIC.

(4) *Notice of extraordinary event.* (i) *Requirements.* Each CIDI must provide the FDIC with a notice no later than 45 days after any material merger, acquisition or disposition of assets, or similar transaction or fundamental change to the CIDI's organizational structure, core business lines, size, or complexity. Such notice must describe the extraordinary event and explain how the event impacts the resolvability of the CIDI. The CIDI must address any material changes resulting from the extraordinary event with respect to which it has provided notice pursuant to this paragraph (c)(4)(i) in the subsequent full resolution submission or interim supplement submitted by the CIDI.

(ii) *Exception.* A CIDI is not required to submit a notice under paragraph (c)(4)(i) of this section if the date by which the CIDI would be required to submit the notice under paragraph (c)(4)(i) of this section would be within 90 days before the date on which the CIDI is required to make a full resolution submission under this section.

(5) *Approval by the CIDI board of directors.* The CIDI's board of directors or, in the case of an insured branch only, a delegate acting under the express authority of the CIDI's board of directors, must approve the full resolution submission. That approval or delegation of express authority must be noted in the minutes of the board of directors.

(6) *Incorporation from other sources—*(i) *Sources.* A CIDI may incorporate information or analysis into the confidential section of its full resolution submission or its interim supplement from one or more of the following without seeking the authorization for disclosure of FDIC confidential

information required under 12 CFR part 309:

(A) The most recent full resolution submission submitted by the CIDI or an affiliate of the CIDI.

(B) The most recent DFA resolution plan of a company that is a CIDI affiliate.

(C) Any other regulatory filing by the CIDI or a CIDI affiliate with the FDIC.

(ii) *Requirements for incorporation from other sources.* A CIDI may incorporate information from other sources only if:

(A) The full resolution submission seeking to incorporate information or analysis from other sources clearly indicates the source and as-of date of the information or analysis the CIDI is incorporating, and the information or analysis required by this section is readily distinguishable from any extraneous parent company (or parent company affiliate) information or analysis, with a description of any material differences.

(B) The CIDI certifies that the information or analysis the CIDI is incorporating from other sources remains accurate in all respects that are material to the CIDI's full resolution submission.

(d) *Content of the full resolution submissions for CIDs.* Each group A CIDI must submit a resolution plan that includes all content specified in this paragraph (d). Each group B CIDI must submit an informational filing that includes the content specified in paragraphs (d)(4) through (9), (d)(10)(i) through (iii) and (vii) through (viii), (d)(11), and (d)(13) through (27) of this section, inclusive; a description of each material change since the submission of its prior informational filing or, where relevant, interim supplement (or affirmation that no such material change has occurred); and a discussion of the changes to the CIDI's previously submitted informational filing resulting from any change in law or regulation, guidance, or feedback from the FDIC, or material change.

(1) *Identified strategy.* (i) Each resolution plan must include an identified strategy for the resolution of the CIDI in the event of its failure that meets the credibility criteria in paragraph (f)(1) of this section.

(ii) A CIDI must utilize as its identified strategy the formation and stabilization of a bridge depository institution that continues operation through the completion of the resolution and exit from the bridge depository institution unless the CIDI determines and demonstrates in its resolution plan why another strategy:

(A) Would be more appropriate for the size, complexity, and risk profile of the CIDI;

(B) Reasonably could be executed by the FDIC across a range of likely failure scenarios; and

(C) Best addresses the credibility criteria described in paragraph (f)(1) of this section.

(iii) The identified strategy must include meaningful optionality for execution across a range of scenarios. The exit from the bridge depository institution may be through a multiple acquirer exit, or any other exit strategy following the stabilization of the operations of the bridge depository institution. The identified strategy may not be based upon a sale or other disposition to one or more acquirers over resolution weekend.

(2) *Failure scenario.* For the identified strategy, the CIDI must use a failure scenario that demonstrates that the CIDI is experiencing material financial distress, such that the quality of the CIDI's asset base has deteriorated and high-quality liquid assets have been depleted or pledged in the stress period before failure due to high, unexpected outflows of deposits and increased liquidity requirements from counterparties that would impact the CIDI's ability to pay its obligations in the normal course of business before the FDIC's appointment as receiver. Though the immediate failure event may be liquidity-related and associated with a lack of market confidence in the financial condition of the CIDI before the final recognition of losses, the identified strategy must also consider the depletion of capital before and at the time of the appointment of the FDIC as receiver. The CIDI may not assume any regulatory waivers in connection with the actions proposed to be taken before or in resolution. To the extent that the CIDI assumes that DIF funding is used during the resolution by a bridge depository institution, it must demonstrate the capacity for such borrowing on a fully secured basis and the source of repayment. The identified strategy must take into account that failure of the CIDI will occur under severely adverse economic conditions developed by the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. 5365(i)(1)(B), and must assume that the U.S. parent company (if any) is in resolution under 11 U.S.C. 101 *et seq.* or another applicable insolvency regime. The FDIC may provide a CIDI additional or alternative parameters for the failure scenario detailed in this paragraph (d)(2). The FDIC will endeavor to provide a CIDI notice of such additional or alternative

parameters for the failure scenario at least one year before the applicable resolution plan is due. Any such additional or alternative parameters:

- (i) May be applicable to all CIDs or only specific individual CIDs; and
- (ii) May include additional conditions, such as different macroeconomic stress scenario information or assumptions with respect to the cause of failure. If the FDIC provides such additional or alternative parameters, the CIDI must use the additional or alternative parameters rather than the conditions specified in paragraph (d)(2) of this section, to the extent inconsistent with the conditions specified in paragraph (d)(2) of this section.

(3) *Executive summary.* A resolution plan must include an executive summary providing:

- (i) A description of the key elements of the identified strategy;
- (ii) An overview of the CIDI's core business lines and franchise components;
- (iii) A description of each material change since the prior resolution plan addressing the changed element (or affirmation that no such material change has occurred);
- (iv) A discussion of the changes to the CIDI's previously submitted resolution plan resulting from any change in law or regulation, guidance, or feedback from the FDIC, or material change; and
- (v) A discussion of any actions taken by the CIDI since the submission of its prior resolution plan to further develop the quality or comprehensiveness of the information and analysis included in the resolution plan, including the identified strategy, or to improve its capabilities to develop and timely deliver that information and analysis.

(4) *Organizational structure: legal entities; core business lines; and branches.* A full resolution submission must:

- (i) Identify and describe the CIDI's, the parent company's, and the parent company affiliates' legal and functional structures, including all material entities.
- (ii) Identify and describe each of the CIDI's core business lines, including whether any core business line draws additional value from, or relies on the operations of, the parent company or a parent company affiliate, and identify any such operations that are cross-border. Provide information about the assets and annual revenue for each core business line, clearly identifying revenue to the CIDI.
- (iii) Map franchise components to core business lines, and franchise components and core business lines to

material entities and regulated subsidiaries.

(iv) Describe the CIDI's branch organization, both domestic and foreign, including the address and total domestic and foreign deposits of each branch.

(v) Identify each CIDI subsidiary that is one of the following legal entities (each a "regulated subsidiary"), and provide the address and asset size of each regulated subsidiary:

(A) A broker or dealer that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*);

(B) A registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

(C) An investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*);

(D) An insurance company, with respect to insurance activities of the insurance company and activities incidental to such insurance activities, that is subject to supervision by a State insurance regulator;

(E) A legal entity that is subject to regulation by, or registration with, the Commodity Futures Trading Commission, with respect to activities conducted as a futures commission merchant, commodity trading adviser, commodity pool, commodity pool operator, swap execution facility, swap data repository, swap dealer, major swap participant, and activities that are incidental to such commodities and swaps activities;

(F) A corporation organized under 12 U.S.C. 611 *et seq.* or a corporation having an agreement or undertaking with the Federal Reserve Board under 12 U.S.C. 601 *et seq.*; or

(G) Any legal entity that is organized under the law of any jurisdiction other than the United States and that is authorized or supervised by a regulatory authority of such jurisdiction in a manner generally comparable to the U.S. legal entities and authorities described in paragraphs (d)(4)(v)(A) through (E) of this section, and includes any subsidiary that takes deposits or conducts the business of banking under the laws of such jurisdiction.

(vi) Identify all of the CIDI's subsidiaries, offices, and agencies with cross-border operations associated with the operations of any core business line or franchise component. For each such subsidiary, office, or agency, provide

metrics that appropriately depict its size and significance, and the location of each such subsidiary, office, and agency.

(5) *Methodology for material entity designation.* A full resolution submission must describe the CIDI's methodology for identifying material entities. The methodology must be appropriate to the nature, size, complexity, and scope of the CIDI's operations.

(6) *Separation from parent; potential barriers or material obstacles to orderly resolution.* The full resolution submission must address the CIDI's ability to operate separately from the parent company's organization, and any impact on maintaining economic viability and preservation of franchise value in a bridge depository institution, with the assumption that the parent company and parent company affiliates are in resolution under 11 U.S.C. 101 *et seq.* or another applicable insolvency regime. The full resolution submission must describe the actions necessary to separate the CIDI and its subsidiaries from the organizational structure of its parent company in a cost-effective and timely fashion. The full resolution submission must identify potential barriers or other material obstacles to an orderly resolution of the CIDI that may occur upon the CIDI's separation from the parent company's organization, as well as risks to the identified strategy (if required), and inter-connections and inter-dependencies that may hinder the timely and effective resolution of the CIDI, and include the remediation steps or mitigating responses necessary to eliminate or minimize such barriers or obstacles.

(7) *Overall deposit activities.* A full resolution submission must:

(i) Describe the CIDI's overall deposit activities, including, insured and uninsured deposits, and particular deposit concentrations or other aspects of the deposit base or underlying systems that may create operational complexity for the FDIC. Describe how any types or groups of deposits are related to a core business line, business segment, or franchise component, and if so, how those types or groups of deposits are identified on the records or systems of the CIDI.

(ii) Identify the total amount of foreign deposits by jurisdiction and what percentage of foreign deposits is dually payable in the United States. Describe any relationship between foreign deposits and core business lines and any deposit sweep arrangements with foreign branches, subsidiaries, and affiliates.

(iii) Identify and describe deposit sweep arrangements, if any, that the CIDI has with the parent company, parent company affiliates, or third parties, and identify contracts governing such deposit sweep arrangements. Describe the CIDI's reporting capabilities on sweep deposits, including whether such reporting is automated and any data lag that affects the accuracy of such reports. If the CIDI receives significant amounts of deposits through such deposit sweep arrangements with the parent company or parent company affiliates, include a detailed discussion of such relationships and the business objectives of such deposit sweep arrangements.

(iv) Identify all omnibus, deposit sweep, and pass-through accounts, and identify the accountholder, the location of relevant contracts, and the system on which the accounts are maintained. Provide a detailed discussion of the capabilities and timeliness of deposit reporting systems and capabilities to generate accurate and timely contact information with respect to any omnibus, deposit sweep, or pass-through accounts.

(v) Provide a report regarding the CIDI's depositors that hold or control the largest deposits (whether in one account or multiple accounts) that collectively are material to one or more business segments ("key depositors"). The report must identify key depositors by name and business segment and the amount of deposit of each key depositor, and for each key depositor must identify other services provided by the CIDI to that depositor, such as lending, wealth management, brokerage services, or custody services. The full resolution submission must describe the CIDI's approach to identifying these key depositors and must describe how long it would take the CIDI to generate such a report and the timeliness of the information provided.

(8) *Critical services.* A CIDI must be able to demonstrate capabilities necessary to ensure continuity of critical services in resolution. In order to support these capabilities, a full resolution submission must:

(i) Identify and describe the CIDI's critical services and critical services support, including whether they are provided, in whole or in part, by or through:

(A) The CIDI or a CIDI subsidiary or branch (and further indicate whether those critical services or critical services support are ultimately provided by a third party), or

(B) The parent company or a parent company affiliate (and further indicate

whether those critical services or critical services support are ultimately provided by a third party).

(ii) Describe the CIDI's process for identifying critical services and critical services support. Describe the CIDI's process for collecting and monitoring the terms of contracts governing critical services and critical services support, and whether services provided pursuant to such contracts and associated costs can be segmented by the material entity, core business line, or franchise component that receives the critical service or critical service support.

(iii) Map critical services support to the legal entities that own, contract for, or employ them, and map critical services to the material entities, core business lines, and franchise components that they support.

(iv) Identify the physical locations and jurisdictions of critical service providers and critical services support that are located outside of the United States.

(v) Identify the critical services and critical services support that may be at risk of interruption in the event of the CIDI's failure and describe the process used to make this determination. Describe the CIDI's approach for continuing critical services in the event of the CIDI's failure. Identify contracts for critical services that contain provisions that, upon the insolvency of the CIDI or the FDIC being appointed receiver of the CIDI, purport to permit the service provider to stop providing services, to alter pricing, or to alter other terms of service. Discuss potential obstacles to maintaining critical services that could occur in the event of the CIDI's failure and steps that could be taken to remediate or otherwise mitigate the risk of interruption, to include those critical services and critical services support provided by the parent company or a parent company affiliate and addressing:

(A) Whether the CIDI and the parent company or parent company affiliate have entered into a written agreement and whether the written agreement has a cost plus or arms' length pricing rate, and the processes used by the CIDI to identify and project liquidity needs associated with those costs; and

(B) The impact on continuity of critical services or critical services support provided by the parent company or a parent company affiliate if the parent company or parent company affiliate is in resolution under 11 U.S.C. 101 *et seq.* or other applicable insolvency regime.

(9) *Key personnel.* A full resolution submission must:

(i) Identify all key personnel by title, function, location, core business line, and employing legal entity.

(ii) Describe the CIDI's methodology for identifying key personnel.

(iii) Provide a recommended approach for retaining key personnel during the CIDI's resolution.

(iv) Identify all employee benefit programs provided to key personnel, including health insurance, defined contribution and defined benefit retirement programs, and any other employee wellness programs, as well as any collective bargaining agreements or other similar arrangements. Identify the legal entity sponsor of each employee benefit program, and provide a description of and points of contact (by title) for such programs.

(10) *Franchise components.* A CIDI must be able to demonstrate the capabilities necessary to ensure that franchise components and the CIDI franchise are marketable in resolution. A full resolution submission must:

(i) Identify franchise components that are currently separable, and are marketable in a timely manner in resolution. For a resolution plan of a group A CIDI, the franchise components identified must be sufficient to implement the identified strategy.

(ii) Provide metrics that depict the size and significance of each franchise component.

(iii) Identify by position the senior management officials of the CIDI who are primarily responsible for overseeing the business activities underlying the franchise component.

(iv) Describe the CIDI's current capabilities and process to initiate marketing of franchise components to potential third party acquirers, and describe the process by which the CIDI would identify prospective bidders for such franchise components.

(v) Describe the key assumptions (such as market conditions, available time to market assets, and anticipated client behaviors) underpinning each franchise component divestiture.

(vi) Describe any significant impediments and obstacles to execution, including significant legal, regulatory, cross-border or operational challenges to the divestiture of each franchise component. This description must also address impediments and obstacles to maintaining internal operations (for example, shared services, information technology requirements, and human resources) and to maintaining access to financial market utilities. Identify the material actions that would be needed to facilitate the sale or disposition of each franchise component and, based on the

CIDI's current capabilities, describe the projected time frame to prepare for and execute the disposition of each franchise component.

(vii) If a CIDI subsidiary or a parent company affiliate is a broker-dealer that provides services to the CIDI or customers of the CIDI, describe such services and the integration of the broker-dealer with the CIDI's business and operations. Provide an analysis discussing the challenges that could arise upon the discontinuation of services if the CIDI were separated from the broker-dealer, and actions to mitigate such challenges.

(viii) Describe the CIDI's current capabilities and processes to establish a virtual data room promptly in the run-up to or upon failure of the CIDI that could be used to carry out sale of the IDI franchise as well as any or all of the CIDI's franchise components, including a description of the organizational structure of information within the virtual data room. Information in the virtual data room must support the ability of the FDIC to market and execute a timely sale or disposition of the IDI franchise or the CIDI's franchise components, be appropriate for a buyer to conduct due diligence for a timely sale or disposition of the IDI franchise or the CIDI's franchise components, and be sufficient to permit a bidder to provide a competitive bid on the IDI franchise or the CIDI's franchise components. A full resolution submission must also describe expected access protocols and requirements for the FDIC to use the virtual data room in order to carry out the sale of the IDI franchise or the CIDI's franchise components, including the FDIC's ability to facilitate bidder due diligence, and describe how information populated within the virtual data room could be transferred to a virtual data room hosted by the FDIC. The full resolution submission should identify the time required to capture all elements of information in the virtual data room, indicating number of days it would take to populate each category of information described below, and the process for each, including any potential obstacles or impediments in producing accurate, timely, and complete information in a useful format. The content of the virtual data room must include the following elements, or those that are applicable in the case of a sale of a franchise component:

(A) Financial information, including annual and interim financial statements, including carve-out financial statements for franchise components, general ledger, and relevant financial information;

(B) Deposit data and information;

(C) Loan and lending operations information;

(D) Securities information, including relevant information describing the CIDI's securities and investment portfolio;

(E) Corporate organization information, including current organizational chart;

(F) Employee information, including organization charts, compensation, and benefits;

(G) Material contracts and critical services information, including key critical services agreements, leases, and bond indentures; and

(H) Other information necessary to facilitate a rapid and effective due diligence process for the sale of the IDI franchise or the CIDI's franchise components.

(11) *Material asset portfolios.* A full resolution submission must identify each material asset portfolio by size, and by category and classes of assets within such material asset portfolio, and include a breakdown of those assets within a material asset portfolio that are held by a foreign branch or regulated subsidiary. For each material asset portfolio, describe how the assets within the portfolio are valued and how they are maintained on the books and records of the CIDI. Identify and discuss impediments to the sale of each material asset portfolio identified and provide a timeline for such sale.

(12) *Valuation to facilitate FDIC's assessment of least-costly resolution method.* A CIDI must be able to demonstrate the capabilities necessary to produce valuations needed in assessing the least-cost test. A resolution plan must:

(i) Provide a detailed description of the approaches the CIDI would employ for determining the values of the franchise components and the IDI franchise as a whole, including the underlying assumptions and rationale. Describe the CIDI's approach to the development of the information needed to support valuation analysis, including a description of the CIDI's current ability to produce updated projections, timely if necessary, to support the FDIC's analysis to determine whether a resolution strategy would be the least costly to the Deposit Insurance Fund in the event of failure.

(ii) Provide the following valuation analysis based upon the failure scenario assumed in the development of the identified strategy, with such adjustments to the scenario as may be necessary to demonstrate the analysis required under paragraph (d)(12)(ii)(B) of this section:

(A) Valuation estimates of the IDI franchise, and where a multiple acquirer exit strategy is incorporated in the identified strategy, a sum-of-the-parts analysis. In determining these valuation estimates, the CIDI must consider appropriate valuation approaches, such as the income-based approach, asset-based approach, and market-based approach. In deriving a range of estimates of value, the CIDI must assess and provide a reasoned quantitative or qualitative analysis in support of whether the conclusion of value should reflect the results of one valuation approach and method, or a combination of the results of more than one valuation approach and method; as appropriate, the resolution plan must discuss the relevance and weight given to the different valuation approaches and methods used.

(B) A qualitative analysis of the impact on franchise value that may result from not transferring any uninsured deposits to the bridge depository institution, including a narrative describing any options to mitigate franchise value destruction where there is not a transfer of all deposits to a bridge depository institution such as, an advance dividend payment to depositors that takes into account the expected loss to depositors, and the impact of such an advance dividend on depositor behavior and preservation of franchise value at different levels of loss. Such qualitative analysis should reflect reasonable assumptions of customer behavior based upon the CIDI's range of services provided to, and interconnections with, depositors.

(iii) Provide all content responsive to paragraph (d)(12)(ii) of this section as an appendix to the resolution plan, including any analysis of liquidity and deposit runoff assumptions and factors underlying such runoff estimates.

(13) *Off-balance-sheet exposures.* A full resolution submission must describe any material off-balance-sheet exposures (including the amount and nature of unfunded commitments, guarantees, and contractual obligations) of the CIDI and map those exposures to core business lines, franchise components, and material asset portfolios.

(14) *Qualified financial contracts.* A full resolution submission must:

(i) Describe the types of qualified financial contract transactions the CIDI is involved with in respect of its customers and business activities, the core business lines and franchise components with which such transactions are associated, and how the CIDI offsets position risk from such

transactions. Identify customers of the CIDI that are counterparties to qualified financial contracts transactions with the CIDI that are significant in terms of gross notional amounts or volumes of transactions.

(ii) Describe the booking models for risk from derivative transactions, including whether customer-facing risk or other dealer-facing risk resides in the CIDI while the position risk hedging is performed by a parent company affiliate. Describe the CIDI's use of any "global risk book," "remote bookings," or "back-to-backs" booking model, identify the challenges these booking models present to the transfer or unwind of such related derivatives, and analyze approaches for addressing those challenges.

(iii) Describe how the CIDI uses qualified financial contracts to manage its hedging or liquidity needs, including specifying the hedged items (including underlying risk, cash flow, assets or liability being hedged) and the applicable core business line, as well as the approach used to mitigate such risks.

(iv) For each of paragraphs (d)(14)(i) through (iii) of this section, identify hedges that receive hedge accounting treatment, core business line-specific hedges, and reporting capabilities and practices for hedge accounting information and other end-user hedges.

(15) *Unconsolidated balance sheet; material entity and regulated subsidiary financial statements.* A full resolution submission must provide an unconsolidated balance sheet for the CIDI and a consolidating schedule for all material entities and regulated subsidiaries that are subject to consolidation with the CIDI. Amounts attributed to legal entities that are not material entities or regulated subsidiaries may be aggregated on the consolidating schedule. Provide financial statements for each material entity and regulated subsidiary. When available, audited financial statements should be provided.

(16) *Payment, clearing, and settlement.* A full resolution submission must identify each provider of payment, clearing, and settlement services, and agent banks, and other financial market utilities (each, a "PCS service provider"), of which the CIDI directly is a member or has a direct relationship that is a critical service or a critical service support. For each such PCS service provider:

(i) Map those PCS service providers to the CIDI's legal entities, core business lines, and franchise components;

(ii) Describe the PCS services provided by such PCS service providers,

including the value and volume of activities on a per-provider basis; and

(iii) Describe the CIDI's role as a PCS service provider that is material in terms of revenue to, or value of, any franchise component or core business line.

(17) *Capital structure; funding sources.* A full resolution submission must:

(i) Provide descriptions of the current processes used by the CIDI to identify the funding, liquidity, and capital needs of and resources available to each material entity that is a CIDI subsidiary or foreign branch. Describe the current capabilities of the CIDI to project and report its funding and liquidity needs (e.g., next day, cumulative next five days, cumulative next 30 days).

(ii) Identify the composition of the liabilities of the CIDI including the types and amounts of short-term and long-term liabilities by type and term to maturity, secured and unsecured liabilities, and subordinated liabilities. Such information must include whether such liabilities are held by affiliates, whether they are publicly issued, their maturity, any call rights provided, and, where applicable, the identity of their indenture trustees.

(iii) Identify the material funding relationships and material inter-affiliate exposures between the CIDI and any CIDI subsidiary or foreign branch that is a material entity, including material inter-affiliate financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, deposits, and derivatives transactions.

(18) *Parent and parent company affiliate funding, transactions, accounts, exposures, and concentrations.* A full resolution submission must:

(i) Identify material affiliate funding relationships, and material inter-affiliate exposures, including terms, purpose, and duration, that the CIDI or any CIDI subsidiary has with the parent company or any parent company affiliate. Such information must include material affiliate financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, deposits, and derivatives transactions.

(ii) Identify the nature and extent to which the parent company or any parent company affiliate serves as a source of funding to the CIDI and CIDI subsidiaries, the terms of any contractual arrangements, including any capital maintenance agreements, the location of related assets, funds, or deposits, and the mechanisms by which funds are transferred from the parent company or any parent company affiliate to the CIDI and CIDI subsidiaries.

(19) *Economic effects of resolution.* A full resolution submission must identify any activities of the CIDI that provide a service or function that is material:

(i) To a geographic area or region of the United States;

(ii) To a business sector or product line in that geographic area or region, or nationally; or

(iii) To other financial institutions.

The full resolution submission must include a discussion of mitigants to the potential impact of termination of those activities in the event of failure of the CIDI, including whether the activity is readily substitutable.

(20) *Non-deposit claims.* A full resolution submission must identify and describe the CIDI's systems and processes used to identify the unsecured creditors of the CIDI that are not depositors, as well as the unsecured creditors of each CIDI subsidiary that is a material entity. Such description must identify the location of the CIDI's records and recordkeeping practices regarding unsecured debt issued by the CIDI and any inter-creditor agreements for unsecured debt. The description must include a description of the CIDI's capabilities to identify each such unsecured creditor by name, address, nature of the liability, and amount owed by the CIDI and each CIDI subsidiary or, in the case of indentured securities, the identity of the indenture trustee.

(21) *Cross-border elements.* A full resolution submission must describe all components of the parent company's and parent company affiliates' operations that are based or located outside the United States, including regulated subsidiaries, and foreign branches and offices that contribute to the value, revenues, or operations of the CIDI. A full resolution submission must also identify all authorities with regulatory or supervisory authority over these operations, and identify regulatory or other impediments to divestiture, transfer, or continuation of any of the CIDI's foreign branches, subsidiaries, and offices in resolution, including with respect to retention or termination of personnel and transfer or continuation of licenses or authorizations.

(22) *Management information systems; software licenses; intellectual property.* A full resolution submission must:

(i) Provide a detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, as well as those used to provide the information required to be provided in the full resolution submission, used by

or for the benefit of the CIDI and CIDI subsidiaries. For each system or application the description must identify the legal owner or licensor, the key personnel needed to support and operate the system or application, the system or application's use and function, any core business line that uses the system or application, its physical location (if any), any related third party contracts or service-level agreements, any related software or systems licenses, and any other related intellectual property.

(ii) For any key management information system or application for which the CIDI or CIDI subsidiary is not the owner or licensor, describe both any obstacles to maintaining access to such system or application when the CIDI is in resolution, and approaches for maintaining access to such system or application when the CIDI is in resolution, including the projected costs of maintaining access when the CIDI is in resolution.

(iii) Describe the capabilities of the CIDI's processes and systems to collect, maintain, and produce the information and other data underlying the full resolution submission. Identify all relevant management information systems and applications, and describe how the information is managed and maintained. Describe any deficiencies, gaps, or weaknesses in such capabilities and the actions the CIDI intends to take to address promptly any such deficiencies, gaps, or weaknesses, and the time frame for implementing such actions.

(23) *Digital services and electronic platforms.* A full resolution submission must:

(i) Describe all digital services and electronic platforms offered to customers to support banking transactions for retail or business customers.

(ii) Identify whether such services and platforms are provided by the CIDI, a CIDI subsidiary, a parent company affiliate, or a third party, and which of them owns the related intellectual property or is the licensee.

(iii) Discuss how these services or platforms are significant to the operations or customer relationships of the CIDI, and their impact on franchise value and depositor behavior.

(24) *Communications playbook.* A full resolution submission must include a communications playbook that describes the CIDI's current communication capabilities, including capabilities to communicate with personnel, customers, and counterparties, and how those capabilities could be used from the

point of the CIDI's failure through the CIDI's resolution. The description must:

(i) Identify categories of key stakeholders addressed in the CIDI's communications plans including, counterparties, domestic and foreign regulatory authorities, customers, and personnel.

(ii) Identify communication channels for each key stakeholder category and describe the logistics and limitations of the use of each communication channel.

(iii) Describe the procedures to generate contact lists for each key stakeholder category and estimate the time required to generate each list.

(iv) Describe procedures for coordinating communications across key stakeholder categories and communications channels, including cross-border communications, if any.

(v) Identify key personnel that are responsible for the CIDI's crisis communications across key stakeholder categories and communications channels and the functional and legal entity organization of relevant communications activities.

(25) *Corporate governance.* A full resolution submission must include a detailed description of: how resolution planning is integrated into the corporate governance structure and processes of the CIDI; the CIDI's policies, procedures, and internal controls governing preparation and approval of the full resolution submission; and the identity and position of the senior management official of the CIDI who is primarily responsible and accountable for the development, maintenance, and filing of the full resolution submission, and for the CIDI's compliance with this section.

(26) *CIDI's assessment of the full resolution submission.* A full resolution submission must describe the nature, extent, and results of any contingency planning or similar exercise conducted by the CIDI since the date of the most recently filed full resolution submission to assess the viability of the identified strategy (if required) or improve any capabilities described in the full resolution submission.

(27) *Any other material factor.* A full resolution submission must identify and discuss any other material factor that may impede the resolution of the CIDI.

(e) *Interim supplement.* Each CIDI must submit interim supplements containing current and accurate information regarding the specified full resolution submission content items in accordance with this paragraph (e).

(1) *Submission date.* (i) Each interim supplement must be submitted to the FDIC on or before the anniversary date (or first business day thereafter) of its most recent full resolution submission,

or its most recent interim supplement, unless the CIDI has received written notice of a different date from the FDIC.

(ii) Notwithstanding paragraph (e)(1)(i) of this section, with respect to all CIDs, no interim supplement is required in the calendar year in which a full resolution submission is made and, with respect to a biennial filer, no interim supplement is required in the calendar year in which it submits a DFA resolution plan.

(2) *Content items for interim supplement.* Each CIDI must submit interim supplements that address each of the following content items:

(i) A description of all material changes resulting from an extraordinary event;

(ii) A description of each material change applicable to interim supplement content items since the submission of its prior full resolution submission (or affirmation that no such material change has occurred);

(iii) The content required under paragraph (d)(4) of this section;

(iv) From paragraph (d)(7) of this section, the content required under paragraph (d)(7)(i), the first sentence of paragraph (d)(7)(ii), the first sentence of paragraph (d)(7)(iii), the first sentence of paragraph (d)(7)(iv), and the first two sentences of paragraph (d)(7)(v) of this section;

(v) From paragraph (d)(8) of this section, the content required under paragraphs (d)(8)(i) and (iv) of this section;

(vi) From paragraph (d)(9) of this section, the content required under paragraph (d)(9)(i) of this section;

(vii) From paragraph (d)(10) of this section, the content required under paragraphs (d)(10)(i) through (iii) of this section;

(viii) From paragraph (d)(11) of this section, the content required under the first sentence of paragraph (d)(11) of this section;

(ix) The content required under paragraph (d)(13) of this section, excluding the requirement to "map those exposures to core business lines, franchise components and material asset portfolios";

(x) The content required under paragraph (d)(15) of this section;

(xi) From paragraph (d)(16) of this section, the content required under the first sentence of paragraph (d)(16) of this section;

(xii) From paragraph (d)(17) of this section, the content required under the first sentence of paragraph (d)(17)(ii) of this section;

(xiii) The content required under paragraph (d)(21) of this section;

(xiv) From paragraph (d)(22) of this section, the content required under paragraph (d)(22)(i) of this section; and

(xv) Any other content element expressly identified for the next interim supplement by the FDIC.

(f) *Credibility; review of full resolution submissions; engagement; capabilities testing*—(1) *Credibility criteria*. Each full resolution submission must be credible. The FDIC may, at its sole discretion, determine that the full resolution submission is not credible if:

(i) The identified strategy would not provide timely access to insured deposits, maximize value from the sale or disposition of assets, minimize any losses realized by creditors of the CIDI in resolution, and address potential risk of adverse effects on U.S. economic conditions or financial stability; or

(ii) The information and analysis in the full resolution submission is not supported with observable and verifiable capabilities and data and reasonable projections or the CIDI fails to comply in any material respect with the requirements of paragraph (d) or (e) of this section.

(2) *Resolution submission review and credibility determination*. The FDIC will review the full resolution submission in consultation with the appropriate Federal banking agency for the CIDI and its parent company. If, after consultation with the appropriate Federal banking agency for the CIDI, the FDIC determines that the full resolution submission of a CIDI is not credible pursuant to paragraph (f)(1) of this section, the FDIC must notify the CIDI in writing of such determination. Any notice provided under this paragraph (f)(2) must include a description of the material weaknesses in the full resolution submission identified by the FDIC that resulted in the determination that the full resolution submission is not credible. A material weakness is an aspect of a CIDI's full resolution submission that individually or in conjunction with other aspects fails to meet the credibility criteria described in paragraph (f)(1).

(3) *Resubmission of a full resolution submission*. Within 90 days of receiving a notice issued by the FDIC pursuant to paragraph (f)(2) of this section that the full resolution submission is not credible based on identified material weaknesses, or such shorter or longer period as the FDIC may determine, a CIDI must submit a revised full resolution submission, or such other information or material specified by the FDIC, to the FDIC that addresses any material weaknesses identified by the FDIC and discusses in detail the

revisions made to address such material weaknesses.

(4) *Failure regarding resubmission*. If the CIDI fails to submit the revised full resolution submission within the required time-period under paragraph (f)(3) of this section or the FDIC determines that the revised full resolution submission fails to address adequately the material weaknesses identified in the notice issued by the FDIC, the FDIC may take enforcement action against the CIDI in accordance with paragraph (j) of this section.

(5) *Significant findings*. The FDIC may also identify significant findings and other observations after review of a full resolution submission. A significant finding is a weakness or gap that raises questions about the credibility of a CIDI's full resolution submission but does not rise to the level of a material weakness. If a significant finding is not satisfactorily explained or addressed before or in the CIDI's next full resolution submission, it may be found to be a material weakness in the CIDI's next full resolution submission. The FDIC may require a project plan with identified milestones to assure that the significant finding is timely addressed. The FDIC may identify an aspect of a CIDI's full resolution submission as a material weakness even if such aspect was not identified as a significant finding in an earlier full resolution submission. The FDIC must notify the CIDI in writing of any significant findings that are identified in the full resolution submission.

(6) *Engagement*. Each CIDI must provide the FDIC such information and access to such personnel of the CIDI as the FDIC in its discretion determines is relevant to any of the provisions of this section ("engagement"). Personnel made available must have sufficient expertise and responsibility to address the informational and data requirements of the engagement. Engagement between the CIDI and the FDIC may be required at any time. This engagement may include the FDIC requiring the CIDI to provide information or data to support the content items required by paragraph (d) or (e) of this section, other information related to a group A CIDI's identified strategy, or, for any CIDI, other resolution options being considered by the FDIC. The FDIC will provide the CIDI with timely notification of the scope of any engagement before such engagement begins and will notify the CIDI on the conclusion of the engagement.

(7) *Capabilities testing*. At the discretion of the FDIC, the FDIC may require any CIDI to demonstrate the CIDI's capabilities described, or

required to be described, in the full resolution submission, including the ability to provide the information, data and analysis underlying the full resolution submission ("capabilities testing"). The CIDI must perform such capabilities testing promptly, and provide the results in a time frame and format acceptable to the FDIC. Capabilities testing may be included in connection with full resolution submission review under paragraph (f)(2) of this section or any engagement under paragraph (f)(6) of this section. The FDIC will provide the CIDI with timely notification of the scope of any capabilities testing before such capabilities testing begins and will notify the CIDI on the conclusion of the capabilities testing.

(g) *No limiting effect on FDIC*. No full resolution submission or interim supplement provided pursuant to this section will be binding on the FDIC as supervisor, deposit insurer, or receiver for a CIDI or otherwise require the FDIC to act in conformance with such full resolution submission or interim supplement.

(1) *Financial information*. The full resolution submission or interim supplement must, to the greatest extent possible, use financial information as of the most recent fiscal year-end for which the CIDI has financial statements or, if the use of financial information as of a more recent date as of which the CIDI has financial statements would more accurately reflect the operations of the CIDI on the date of the submission, financial information as of that more recent date.

(2) *Indexing of information and analysis to full resolution submission and interim supplement content requirements*. A full resolution submission or interim supplement must include an index of each content requirement in paragraph (d) or (e)(2) of this section, as applicable, required to be included in that full resolution submission or interim supplement, as applicable, to every instance of its location in the full resolution submission, or interim supplement, as applicable.

(3) *Combined full resolution submission or interim supplements by affiliated CIDs*. CIDs that are affiliates may submit a single, combined full resolution submission or interim supplement, but only if all affiliated CIDs submitting the combined full resolution submission or interim supplement are within the same CIDI group, whether group A or group B. The combined full resolution submission or interim supplement must satisfy the content requirements for each CIDI's full

resolution submission or interim supplement, as applicable, and the FDIC must be able to readily identify the portions of a combined full resolution submission or interim supplement that comprise each CIDI's full resolution submission or interim supplement.

(h) *Form of full resolution submissions; confidential treatment of full resolution submissions and interim supplements.* (1) Each full resolution submission must be divided into a Public Section and a Confidential Section. Each CIDI must segregate and separately identify the Public Section from the Confidential Section. The Public Section must consist of a summary overview of the full resolution submission that describes the business of the CIDI. For each CIDI, the Public Section must include, to the extent material to the CIDI's full resolution submission:

- (i) The names of material entities;
- (ii) A description of core business lines;
- (iii) Consolidated financial information regarding assets, liabilities, capital and major funding sources;
- (iv) A description of derivative activities and hedging activities;
- (v) A list of PCS service providers;
- (vi) A description of foreign operations;
- (vii) The identities of material supervisory authorities;

(viii) The identities of the principal officers;

(ix) A description of the corporate governance structure and processes related to resolution planning;

(x) A description of material management information systems; and

(xi) For group A CIDs only, a description, at a high level, of the CIDI's identified strategy.

(2) The confidentiality of full resolution submissions and interim supplements must be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the FDIC's Disclosure of Information Rules (12 CFR part 309).

(3) Any CIDI submitting a full resolution submission, interim supplement, or related materials pursuant to this section that desires confidential treatment of the information submitted pursuant to 5 U.S.C. 552(b)(4) and 12 CFR part 309 and related policies may file a request for confidential treatment in accordance with those rules.

(4) To the extent permitted by law, information comprising the Confidential Section of a full resolution submission and the information comprising an interim supplement will be treated as confidential.

(5) To the extent permitted by law, the submission of any non-publicly

available data or information under this section will not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject. Privileges that apply to full resolution submissions and related materials are protected pursuant to 12 U.S.C. 1828(x).

(i) *Extensions and exemptions*—(1) *Extension.* Notwithstanding the general requirements of paragraph (c) of this section, on a case-by-case basis, the FDIC may extend, on its own initiative or upon written request, any time frame or deadline of this section.

(2) *Waiver.* The FDIC may, on its own initiative or upon written request, exempt a CIDI from one or more of the requirements of this section.

(j) *Enforcement.* Violating any provision of this section constitutes a violation of a regulation and may subject the CIDI to enforcement actions under 12 U.S.C. 1818, including paragraph (t) thereunder.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on June 20, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–13982 Filed 7–8–24; 8:45 am]

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